United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

Mr. S-T- Trustee
11-3-70
(47)

VOLUME I

Nos. 23,295 23,300 23,750 23,751

924

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

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Nos. 23,295, 23,300

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

GEORGE A. ANGLE, D/B/A KANSAS REFINED HELIUM COMPANY,

Intervenor.

Nos. 23,750, 23,751

GEORGE A. ANGLE, D/B/A KANSAS REFINED HELIUM COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petitions for Review and Cross-Application for Enforcement of Orders of The National Labor Relations Board

APPENDIX

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APPENDIX

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Seventeenth Region

In the Matter of: GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY, and OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO.	Case Nos. 17-CA-3021 17-CA-3021-2

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Oil, Chemical and Atomic Workers International Union, AFL-CIO

Case No.: 17-CA-3021 and 17-CA-3021-2

9.21.66	Charge filed in Case No. 17-CA-3021.
9.22.66	Charge filed in Case No. 17-CA-3021-2.
11. 1.66	Amended Charge filed in Case No. 17-CA-3021-2.
11.16.66	Order Consolidating Cases, Complaint and Notice of Hearing, dated.
11.23.66	Amendment to Complaint, dated.
11.23.66	Company's Answer to Complaint, dated.
11.23.66	Company's Motion requesting the complaint be made more definite and certain, dated.
11.25.66	General Counsel's Motion in Opposition to Company Motion to make more definite and certain, dated.
11.30.66	Trial Examiner's Order denying Company's motion, dated.
11.30.66	Company's Motion to Sever, dated.
11.30.66	Company's Motion for Continuance, dated.
12. 5.66	General Counsel's Motion in Opposition to Company's Motion to Sever, dated.
12. 6.66	Regional Director's Order rescheduling hearing, dated.

12. 6.66 Trial Examiner's Order denying Company's Motion to Sever, dated.

12.29.66 Acting Regional Director's Order rescheduling hearing, dated.

1.13.67 Regional Director's Order rescheduling hearing, dated.

1.18.67 Hearing opened.

2.14.67 Company's Motion to Reopen Record and for additional hearing, dated.

2.21.67 General Counsel's Statement in Opposition to Respondent's Motion to Reopen Record and for additional hearing, dated.

3. 8.67 Company's Supplemental Motion to Reopen Record and for additional hearing, dated.

3. 8.67 Trial Examiner's Order denying Company's Motion to Reopen Record, dated.

3.10.67 General Counsel's Opposition to Company's Supplemental Motion to Reopen Record and for additional hearing, dated.

3.15.67 Trial Examiner's Order denying Supplemental Motion to Reopen Record, dated.

3.22.67 Company's Motion to Correct Transcript Record, received.

6. 2.67 Company's Motion to Dismiss Allegations relative to 8(a)(5) refusal to bargain, dated.

6. 9.67 General Counsel's Opposition to Company's Motion to Dismiss Allegations relating to 8(a)(5) refusal to bargain, dated.

6.14.67 Company's Reply to General Counsel's Opposition re dismissal of 8(a)(5) refusal to bargain, dated.

6.19.67 Trial Examiner's Order denying Motion to Dismiss and granting Leave to Apply for Re-Opening of Record, dated.

6.23.67 General Counsel's Request for Special Permission to Appeal Ruling of Trial Examiner, dated.

6.23.67 Company's Motion Requesting Permission to Reopen the Record, dated.

6.27.67 General Counsel's Supplement to his request for special permission to appeal ruling of Trial Examiner, dated.

7.21.67 General Counsel's Motion to incorporated record and take official notice, dated.

7.24.67 General Counsel's telegraphic withdrawal of his Request for special permission to appeal ruling of Trial Examiner and Supplement to Request, dated.

7.25.67	Board's Order granting General Counsel's Request to withdraw his Request for special permission to appeal and his Supplement, dated.
7.26.67	Company's Opposition to General Counsel's Motion to incorporate record and take official notice, dated.
8. 1.67	Trial Examiner's Order reopening hearing, dated.
8. 2.67	Company's Motion to reopen, dated.
8. 2.67	Trial Examiner's letter changing the location of the hearing, dated.
8. 3.67	Trial Examiner's letter informing counsel regarding evidence that will be received at the hearing.
8. 4.67	General Counsel's telegraphic Opposition to Respondent's Motion to reopen, dated.
8. 7.67	Trial Examiner's Order denying Motion to reopen record, dated.
8.23.67	General Counsel's Request to received exhibit and to close hearing, dated.
9. 6.67	Trial Examiner's Order receiving exhibit and closing hearing, dated.
9. 7.67	Company's Motion to disallow General Counsel's Exhibit No. 20-A or to correct said exhibit, received.
9.12.67	Trial Examiner Goldberg's Preliminary Decision, dated.
9.21.67	Trial Examiner's letter to Company counsel advising that no purpose would be served by issuing an order on his Motion to disallow and that he will decide motion in Decision, dated.
10.20.67	Petitioner's Partial Exceptions to Trial Examiner's Order, received.
10.20.67	Petitioner's Request for Oral Argument, received.
10.23.67	Company's Exceptions to Trial Examiner's Decision, received.
12.20.67	Trial Examiner's Supplemental Decision, issued.
1.24.68	Company's Exceptions to Trial Examiner's Supplemental Decision, received.
1.30.68	Board's Order reopening record and remanding case to Trial Examiner, dated.
3.22.68	Trial Examiner's Order reopening hearing, dated.

6. 5.68	Thomas B. Garrett's Motion for Continuance of Tentative Hearing Date Filed, received.
6. 6.68	General Counsel's telegram to parties informing he has no objections to Garrett Motion, dated.
6. 7.68	Company's telegram regarding rescheduling of hearing, dated.
6.10.68	Trial Examiner's Order continuing hearing, dated.
7. 2.68	General Counsel's Motion to close hearing and to transfer case to the Board, dated.
7.12.68	Motion filed in behalf of Employee Thomas Garrett, dated.
7.12.68	Company's Opposition to General Counsel's Motion to close hearing and transfer case to the Board, dated.
7.16.68	General Counsel's telegram to parties in answer to Company's Opposition to General Counsel's Motion to close hearing and transfer case to the Board, dated.
7.23.68	Company's Reply to General Counsel's Answer, dated.
7.23.68	Company's Opposition to Motion filed in behalf of Thomas Garrett, dated.
7.24.68	General Counsel's telegram to parties regarding Company's Reply to General Counsel's Answer, dated.
7.26.68	Trial Examiner's Order denying Motion to close record and continuing hearing, dated.
9.10.68	Hearing closed.
11.26.68	Trial Examiner's Order to Show Cause when transcript of testimony should not be corrected, dated.
12. 6.68	Company's Reply to Trial Examiner's Order to Show Cause, dated.
12.13.68	Trial Examiner's Order correcting transcript, dated.
12.30.68	Trial Examiner's Decision and Report, dated.
1.22.69	Company's Exceptions to Trial Examiner's Decision and Report, received.
6.25.69	Decision and Order issued by the National Labor Relations Board, dated.

Conference Room,
Federal Office Building,
Great Bend, Kansas,
Wednesday, January 18, 1967

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a.m.

BEFORE:

SIDNEY D. GOLDBERG, Trial Examiner.

APPEARANCES:

GERALD A. WACKNOV, Esq. and R. L. DePROSPERO, Esq.	610 Federal Office Building, 601 East Twelfth Street, Kansas City, Missouri, appearing as counsel for the General Counsel.
PATRICK F. KELLY, Esq.	Union National Building Wichita, Kansas, appearing on behalf of Oil, Chemical and Atomic Workers International Union, AFL-CIO, the Charging Party.
MARVIN J. MARTIN, Esq. and W. STANLEY CHURCHILL, Esq.	458 North Market, Wichita, Kansas, appearing on behalf of George A. Angle, d/b/a Kansas Refined Helium Company, the Respondent.

* * * * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

TRIAL EXAMINER GOLDBERG: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of George A. Angle, d/b/a Kansas Refined Helium Company, Case Nos. 17-CA-3021, 17-CA-3021-2.

The Trial Examiner conducting this hearing is Sidney D. Goldberg.

* * * * *

Will counsel and other parties, or other representatives of the parties, please state their appearances for the record.

MR. KELLEY: My name is Patrick F. Kelly, attorney at Wichita, and I am here on behalf of the Oil, Chemical and Atomic Workers International Union.

TRIAL EXAMINER: Next.

MR. DePROSPERO: Appearing for the General Counsel is Gerald Wacknov and R. L. DeProspero.

TRIAL EXAMINER: Are you an attorney or field examiner?

MR. DePROSPERO: Attorney.

TRIAL EXAMINER: What is your first name?

MR. DePROSPERO: Richard L. DeProspero.

MR. MARTIN: Marvin J. Martin, attorney, 458 North Market, Wichita, Kansas, appearing on behalf of the Respondent, George A. Angle, together with Mr. W. Stanley Churchill of the same address, also an attorney.

* * * * *

TRIAL EXAMINER: Will you admit so much of the paragraph alleges that a demand was made, and admit it was made, on or about whatever date you received it, and if it becomes important for the General Counsel to litigate that particular thing —

MR. MARTIN (interrupting): You are referring to Paragraph 4?

TRIAL EXAMINER: 4-D. That is on Page 3 of the complaint.

MR. MARTIN: We will admit that on or about June the 30th, the Respondent did receive a letter requesting bargaining.

* * * * *

TRIAL EXAMINER: What about the supervisory status of Mr. Klein and Mr. Owens? That was in the amendment to the complaint and was not covered by your answer. Do you wish to interpose a denial or admission at this time to the allegation that Norman Klein was

plant manager and Buddy Owens was plant manager, and that they are supervisors within the meaning of the Act? What is your position on that?

MR. MARTIN: We can admit that Norman Klein is and was at all times material a supervisor within the meaning of the Act. We can admit that Mr. Buddy Owens was, up until on or about September 20th, 19th or 20th, a supervisor within the meaning of the Act.

* * * * *

MR. WACKNOV: I wanted to mention and put the Respondent on notice that General Counsel intends to ask for a remedy in this case which is not a usual type of remedy. There is authority, and we plan to brief extensively this authority, that because of the willful — and we plan to show that that conduct was willful — nature of the violations involved, the usual remedy of the National Labor Relations Board is not effective in this proceeding, and a more forceful remedy, a more forceful remedial provision must be used in order to make this Respondent and other willful violators of the law —

TRIAL EXAMINER (interrupting): Mr. Wacknov, as long as you terrorize the Respondent, at this point you might tell him what type of remedy you are going to ask for.

MR. WACKNOV: As far as your wording, "terrorize," I think the Respondent should know at the outset instead of at the end of the hearing so Respondent may take any action necessary.

TRIAL EXAMINER: Go ahead.

MR. WACKNOV: Basically, what it is, Mr. Trial Examiner, is historic interim earnings have been deducted from the back pay owed to the employees discharged. There is authority. In this case, the back pay should be computed without the deduction of interim earnings.

TRIAL EXAMINER: Sort of double penalties under the Wages and Hours Act, something like that.

* * * * *

29 TRIAL EXAMINER: You needn't introduce that. I will take official notice of documents filed by the General Counsel with the United States District Court. * * *

* * * * *

33 Whereupon,

HAGER PATTON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION

Q. (By Mr. Wacknov) Will you state your name and address.

A. Hager Patton, 8101 South Meade, Wichita, Kansas.

Q. Mr. Patton, what is your job, what do you do? A. I am an international representative for the Oil, Chemical and Atomic Workers

34 International Union.

Q. For how long have you been an international representative?

A. Since May 5, 1952.

Q. Sometime, Mr. Patton, in June 1966, were you contacted or was your organization contacted by an employee of Kansas Refined Helium Company? A. Early part of June our district office apparently was contacted by an employee of Kansas Refined Helium.

Q. Where is your district office located? A. Tulsa, Oklahoma. And as a result of that contact, I was given an assignment to make further contacts with the employees to determine the organization interest of those employees at K.R.H.

Q. Who was that employee that contacted the union?

* * * * *

A. Dwayne Johnson.

35 Q. (By Mr. Wacknov) As a result of that request, what did you do? A. I contacted Dwayne Johnson by telephone and arranged a meeting with him to be held at the Holiday Inn in Great Bend, Kansas.

I believe that meeting was arranged with him and other interested employees as I requested him to have present; I believe it was about June 14. It could have some other date but it strikes me it must have been about June 14, or thereabouts.

On June 14, or whatever the date the meeting was arranged with Mr. Johnson, I met with him and three other employees of Kansas Refined Helium at the Holiday Inn in Great Bend, Kansas.

Q. Who were these three employees other than Mr. Johnson? A. Mr. Johnson was one of the employees, Russell Sims was another employee and Mr. Arel Rodgers was the third employee.

Q. Have all of these employees been discharged? A. All three of those employees have been discharged.

Q. Go ahead. A. At that meeting of those three employees, they had indicated by discussion in the plant they felt there was sufficient interest to open an organizing campaign. I asked them to furnish me a list of names and addresses of other employees in the plant and for the purpose of making a survey, because we do not open an organizing campaign unless we find sufficient interest among the employees. They did furnish me a list of names and addresses of other em-

36 ployees.

I did, I believe, on June 16, 17 and 18, or thereabouts, made contact with other employees of Kansas Refined Helium and discussed with them and asked as to their knowledge of possible interest of the employees toward a union in the plant. In this discussion with other employees it seemed there was sufficient interest to open an organizing campaign and a meeting was arranged through Mr. Johnson for June 22, I believe, at the Holiday Inn in Great Bend, Kansas, which I again asked him to have other employees that he might consider as being key people and interested people to be present at that meeting.

At that meeting there was myself, another international representative, C. R. Williams, and four employees from Kansas Refined Helium appeared at that meeting.

Q. Who are these four? A. Dwayne Johnson, Russell Sims, Arel Rodgers and John Harris. At that meeting those present signed membership applications.

Q. Were you there, Mr. Patton, when they signed membership applications? A. Yes, I was present.

Q. Did you hand them membership applications? A. I passed membership applications to all four that were present.

* * * * *

37 Q. (By Mr. Wacknov) I hand you what has been marked as General Counsel's Exhibit No. 3-A. Will you identify that exhibit, please? A. This is a membership application that —

TRIAL EXAMINER (interrupting): Just tell me what it is without the contents.

THE WITNESS: It is a membership of Russell M. Sims.

Q. (By Mr. Wacknov) Was it signed, Mr. Patton, in your presence at the meeting? A. Yes.

Q. On June 22? A. Yes.

* * * * *

40 TRIAL EXAMINER: Any objection to the card?

MR. MARTIN: I have an objection. The objection goes to the statement which may or may not have induced the signature of the cards.

41 TRIAL EXAMINER: Those are not objections to its receipt. The objection is overruled and the card is received.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 3-A, was received in evidence.)

TRIAL EXAMINER: Proceed, Mr. Wacknov.

Q. (By Mr. Wacknov) I hand you what has been marked as General Counsel's Exhibit No. 3-B. Will you identify that? A. This is a membership application of Arel L. Rodgers.

Q. And when is it dated? A. On 6/22/66.

Q. June 22? A. Yes.

Q. This was signed at the meeting you were referring to?

A. Yes.

Q. Was it signed in your presence? A. Yes.

* * * * *

42 TRIAL EXAMINER: Any objection to the receipt of the card?

MR. MARTIN: Not as to the receipt.

TRIAL EXAMINER: It is received.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 3-B, was received in evidence.)

Q. (By Mr. Wacknov) I hand you what has been marked as General Counsel's Exhibit 3-C. Will you identify that? A. It is the membership application of Dwayne A. Johnson.

43 Q. Was he at the meeting you referred to? A. Yes, he was.

Q. Was the card signed on June 22, 1966? A. It was.

Q. And was it signed in your presence? A. Yes.

MR. WACKNOV: I offer General Counsel's Exhibit 3-C into evidence.

* * * * *

44 TRIAL EXAMINER: Where do we stand on Johnson's card? Do you have any objection to its receipt into evidence?

MR. MARTIN: No.

TRIAL EXAMINER: It is received.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 3-C, was received in evidence.)

Q. (By Mr. Wacknov) I hand you what has been marked as General Counsel's Exhibit 3-E. A. This is a membership card of John Sherman Harris.

Q. Was he at the meeting?

45 A. Yes.

Q. When was the card dated? A. June 22, 1966.

Q. Was it signed in your presence? A. Yes.

MR. WACKNOV: I offer General Counsel's Exhibit No. 3-D into evidence.

* * * * *

TRIAL EXAMINER: Any objection to its receipt, Mr. Martin?

MR. MARTIN: No objection.

46 TRIAL EXAMINER: It is received.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 3-D, was received in evidence.)

* * * * *

VOIR DIRE EXAMINATION

47 Q. (By Mr. Martin) Mr. Patton, can you tell me which of these exhibits which I am handing you, which are 3-E through 3-R, were witnessed by you, the signatures on those cards? A. In addition to the four we have testified to, the membership application of Thomas B. Lynch was witnessed by me.

TRIAL EXAMINER: What number is that?

THE WITNESS: No. 3-H.

TRIAL EXAMINER: Anything else?

MR. MARTIN: We object to all the cards except 3-H, and I would like to continue with my voir dire.

TRIAL EXAMINER: There is no proof to those cards. You concede Lynch's card?

MR. MARTIN: I have another card.

Q. (By Mr. Martin) I notice the date 6/23/66 seems to be blue in your signature and the balance of the bard is in black. Did you insert the date? A. I did insert the date and that is the wrong date.

That was signed on June 22, at the meeting at the Holiday Inn at Great Bend.

48 Q. When did you insert the date of June 23? A. The night of the date the card was signed.

Q. You inserted June 22 on all the others but you got a later date on that one? A. On this one I inserted June 23.

* * * *

Q. Who was present with you and Mr. Lynch? A. Mr. Williams.

TRIAL EXAMINER: Is it your testimony you visited the signer of that card at his home on the 23rd and you signed the card?

THE WITNESS: Our visit was on the 22nd. I signed it in his presence and the presence of Representative Williams.

TRIAL EXAMINER: On the 22nd?

THE WITNESS: I inserted the date of the 23rd which was an error.

TRIAL EXAMINER: Anything else?

Q. (By Mr. Martin) When did you insert the date of the 23rd? A. I think I inserted it the night he signed the card. I affixed my signature and inserted that.

Q. Are you sure? A. I am sure.

Q. Was it in Mr. Lynch's presence that you inserted the date?

49 A. Yes.

TRIAL EXAMINER: Any objection to the card of Mr. Lynch?

(No response.)

TRIAL EXAMINER: It will be received into evidence.

* * * *

51 Q. (By Mr. Wacknov) I show you what has been marked as General Counsel's Exhibit No. 4. Will you identify that? A. This is a copy of a letter requesting recognition, addressed to Mr. Buddy Owens or addressed to Kansas Refined Helium Company, attention Buddy Owens, plant manager.

52 Q. What is the date? A. June 29, 1966.

Q. Does that letter specify in what specific unit you are requesting --

TRIAL EXAMINER (interrupting): No, no, no. I don't want to know any of the contents. It is not in evidence. Proceed to get it into evidence and then we will discuss it further.

That is a letter, a copy of the letter you wrote?

THE WITNESS: Yes.

MR. WACKNOV: I offer General Counsel's Exhibit No. 4.

TRIAL EXAMINER: Any objection to the letter after having seen that you received it, Mr. Martin?

MR. MARTIN: We have acknowledged receipt of such a letter.

TRIAL EXAMINER: Is that it?

MR. MARTIN: Yes. We have no objection.

TRIAL EXAMINER: No objection, it is received.

* * * *

59 CROSS-EXAMINATION

Q. (By Mr. Martin) Mr. Patton, during the course of a deposition being taken upon you, do you recall advising us that on June 22 four signed cards were handed in? A. Four at the meeting, yes.

Q. How many cards do you say now were handed to you at this meeting? A. I say four were handed to me at this meeting.

Q. Which ones? A. Sims, Rodgers, Harris, and Johnson.

Q. Now, when do you say your next card came to you? A. After the meeting of the receipt of those cards, Representative Williams and I made a house call at the home of Thomas Lynch at which time he signed his card, or he signed his card that night.

* * * *

61 Q. (By Mr. Martin) Are you saying you met with Mr. Lynch on the evening of the 23d? A. I am saying I met with Mr. Lynch on the evening of the 22d.

Q. But you dated his card the 23d, is that correct? A. Right.

Q. Now, at the time you had this first meeting with the employees at the Holiday Inn Motel, what was your discussion with them?
A. The first meeting related to the number of employees in the plant, the plant manager, address, their knowledge of interest toward organization, and my request of them of listing of names and addresses of other employees in the plant. This was the first meeting.

Q. Didn't you also at that time discuss with them the way in which you organized was to obtain a showing of interest and file a petition with the National Labor Relations Board? A. We explained to them, either in that meeting or the second meeting, certainly we explained to them somewhere along the line, and this is our ordinary procedure and usual procedure, is to explain to the employees we are discussing this matter with our procedure with respect to when we have obtained sufficient
62 cards to file for a petition. We may not choose to file on the basis of 30 per cent, because we do not file until we feel we have a majority, and we explained to them in the meetings, I believe as we have in others, we do not file ordinarily a petition until we have 65 per cent of the employees signed up.

Q. But you informed the employees and you told the employees your procedure is to obtain the cards to file for an election with the National Labor Relations Board? A. We explained to them we would make a request for recognition of the employer, which we anticipated would be denied, and then on denial, we would file a petition with the National Labor Relations Board.

Q. And you explained to them there would be an election, did you not? A. I explained to them the possibility that we could gain recognition without an election if the company was willing to grant such recognition. In case of failure to grant such recognition, we would file a petition and we would anticipate there would be an election.

* * * *

63 A. We made several mailings to the employees addressed to all employees I assume we have the names and addresses of. We did submit prepared leaflets for distribution that we distributed to the employees in meetings that were held and also enclosed some of them in connection with some of our mailings.

MR. MARTIN: Let me ask the reporter if she would mark a group of leaflets as Respondent's Exhibits No. 2-A, B, C, D, E, and F?

(The documents above referred to were marked Respondent's Exhibits No. 2-A, B, C, D, E, and F for identification.)

Q. (By Mr. Martin) I hand you what has been marked Exhibits No. 2-A through 2-F and ask you if you can identify these.

TRIAL EXAMINER: Just first in a group, if possible. A. Yes. These are copies of literature that was distributed or available to the employees in the local meetings, or possibly some of them were mailed, I don't recall, but these are materials that were supplied to the employees.

Q. (By Mr. Martin) Throughout the organizing campaign of the Kansas Refined Helium Company? A. Yes.

MR. MARTIN: We offer Exhibits No. 2-A through 2-F.

TRIAL EXAMINER: Any objection, Mr. Wacknov?

MR. WACKNOV: No objection.

* * * *

65 TRIAL EXAMINER: They were distributed beginning June 22d and thereafter, is that correct?

THE WITNESS: Yes.

* * * *

70 Q. (By Mr. Martin) I hand you what has been marked as Respondent's Exhibit No. 4-A and No. 4-B and ask you if you can identify them. A. No. 4-A is a copy of a letter addressed to the Regional Board accompanied with a copy of a petition, a copy of which was sent to Mr. Angle or Kansas Refined Helium Company. Now, 4-B --

TRIAL EXAMINER (interrupting): Just a minute, you have answered the question. Is there anything more to your answer?

THE WITNESS: I answered with respect to No. 4-A, and No. 4-B is a copy of the petition, both of which were sent to Kansas Refined Helium.

Q. (By Mr. Martin) Were they sent to Kansas Refined Helium Company by mail? A. Yes.

Q. Were they mailed on or about June 30, 1966? A. Yes.

MR. MARTIN: We would offer Respondent's Exhibits No. 4-A
71 and No. 4-B.

TRIAL EXAMINER: Any objection?

MR. WACKNOV: No objection.

TRIAL EXAMINER: Your offer admits you received them?

MR. MARTIN: Yes.

TRIAL EXAMINER: They are received into evidence.

* * * *

72 Q. (By Mr. Martin) I hand you what has been marked as Respondent's Exhibit No. 5 and ask you if you can identify that.

A. This is a copy of a letter sent by myself addressed to Mr. George A. Angle, dated August 2, 1966.

Q. Is that the only other communication you wrote to Mr. Angle other than Respondent's Exhibit No. 4-A and General Counsel's Exhibit No. 4? A. That is, as I recall.

TRIAL EXAMINER: What is the date of it?

THE WITNESS: August 2, 1966.

73 MR. MARTIN: We wish to offer Respondent's Exhibit No. 5.

MR. WACKNOV: No objection.

TRIAL EXAMINER: Let me see.

Received.

* * * *

81 REDIRECT EXAMINATION

Q. (By Mr. Wacknov) Mr. Patton, did you receive a response to your letter to Mr. Angle requesting recognition? A. I did, I

believe, under date of July 6, as I recall.

MR. WACKNOV: Would you mark that, please?

(The document above referred to was marked General Counsel's Exhibit No. 5 for identification.)

Q. (By Mr. Wacknov) I hand you what has been marked as General Counsel's Exhibit No. 5. Will you identify that exhibit, please? A. This is a letter I received myself signed by Mr. George A. Angle under date of July 6 in response to my letter requesting recognition of the Oil, and Chemical, and Atomic Workers.

Q. Did you receive it on or about July 6th or 7th? A. Yes, I presume.

MR. WACKNOV: I offer General Counsel's Exhibit No. 5.

MR. MARTIN: No objection.

TRIAL EXAMINER: Do you concede having received it?

MR. MARTIN: Yes.

* * * *

86 C. R. WILLIAMS

was called as a witness by and on behalf of the General Counsel and, having first been duly sworn, was examined and testified as follows?

DIRECT EXAMINATION

Q. (By Mr. Wacknov) Would you state your name and address, please? A. C. R. Williams, 719 McBurney Building, Tulsa, Oklahoma.

Q. Mr. Williams, what is your job, what do you do? A. I am an International representative of Oil, Chemical and Atomic Workers, mainly on organizing.

87 Q. Do you hold the same position that Mr. Hager Patton holds? A. I do.

Q. Mr. Williams, have you been involved in the organizational campaign at Kansas Refined Helium plant? A. Sometime in June a meeting was held in my room and I was sent up here to assist Mr. Patton in organizing the Kansas Refined Helium Company.

Q. In the course of your campaign, did you personally solicit the signatures on organization cards from employees? A. At the meeting that night, which was conducted mainly by Mr. Patton, of course, later we went out to Mr. Lynch's home and signed him up at his home, and the next morning I went into Hoisington and signed up two employees who were former members of our union.

Q. I hand you, Mr. Williams, what has been marked General Counsel's Exhibit No. 3-I. Will you identify this, please? A. H.L. Harms lives at 225 West Broadway, or did at that time.

Q. What is that? A. Membership application card.

Q. Did you solicit Mr. Harm's signature on that card?

A. Yes, I did.

Q. Did he sign the card in front of you? A. He did.

Q. What date? A. Six, 23d.

88 Q. You mean June 23d? A. Yes.

Q. Is that the date that appears on the card? A. Yes.

MR. WACKNOV: I offer General Counsel's Exhibit No. 3-I into evidence.

TRIAL EXAMINER: Any objection, Mr. Martin?

MR. MARTIN: May I take the witness on voir dire?

TRIAL EXAMINER: Yes.

Q. (By Mr. Martin) Who was, who filled in the date of June 23, 1966? A. On this exhibit, as I recall, it was filled in by me and then he signed it.

Q. Was all the information filled in by you other than for his signature? A. That has been so long ago I can't recall.

MR. MARTIN: Your Honor, on that basis, I would object to the admission of the instrument.

TRIAL EXAMINER: Did you see him sign it?

THE WITNESS: Yes.

TRIAL EXAMINER: Did you see him read it?

THE WITNESS: I saw him read it. I asked him to read it before he signed.

TRIAL EXAMINER: The objection is overruled. The card will be received.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 3-I, was received in evidence.)

Q. (By Mr. Wacknov) I hand you what has been identified as General Counsel's Exhibit No. 3-J. A. It is a card that was signed on June 23, 1966, by Mr. Don Foose and in front of the residence at 1307 North Green.

TRIAL EXAMINER: What sub number does that have?

MR. KELLEY: J.

TRIAL EXAMINER: What was the name?

THE WITNESS: Don Foose.

TRIAL EXAMINER: Proceed.

Q. (By Mr. Wacknov) Mr. Williams, did you give the date on which that was signed? A. June 23, 1966.

Q. Did you see Mr. Foose sign the card? A. I did.

Q. He signed it in front of you? A. Right.

MR. WACKNOV: I offer General Counsel's Exhibit No. 3-J.

* * * * *

90 MR. MARTIN: I have no other questions. I have no objection.

TRIAL EXAMINER: It will be received.

* * * * *

92 Whereupon,

RUSSELL L. BISHOP

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Wacknov) Would you state your name and address, please. A. Russell L. Bishop, 1427 Ida, Wichita, Kansas.

Q. Mr. Bishop, were you formerly employed at Kansas Refined Helium Company? A. I was.

Q. Do you recall when you were terminated? A. September 27, 1966.

Q. What was your position or job description? A. Junior operator.

* * * * *

Q. (By Mr. Wacknov) I hand you what has been marked as
93 General Counsel's Exhibit No. 3-M. Would you identify that, please. A. Yes. This is the card I signed. It is a membership application for the Oil, Chemical and Atomic Workers International Union.

Q. Is the date on there when you signed it?

TRIAL EXAMINER: When did you sign it, Mr. Bishop, do you remember?

THE WITNESS: I do not remember when I signed it, but I filled the card out and it was dated June 23, 1966.

* * * * *

Q. (By Mr. Martin) Where did you sign this exhibit, General Counsel's 3-M, Mr. Bishop? A. In the driveway of my home.

Q. Who was present? A. Arel Rodgers and myself.

94 Q. That is all? A. That is it.

Q. The name which appears on the document as H. Patton as witness is incorrect, is that correct? A. He wasn't there, no.

Q. Do you know when his name was assigned to that card? A. Sometime after I signed it.

Q. Are you sure that Mr. Patton didn't also put the date on there? A. I don't believe he did.

Q. But you are not sure? A. I am not positive. I couldn't honestly say yes or no to that.

* * * * *

96 MR. WACKNOV: Mr. Trial Examiner, this card is stamped on the back with a stamp of the Seventeenth Region, which has the date and time it was received in our office, and on there is July 1, 1966, at 1:48 p.m., it was received in the mail, Mr. Examiner.

TRIAL EXAMINER: Yes.

MR. WACKNOV: It would have been signed sometime prior to the date we received it, of course, and at this time I would ask you to take official notice of the Seventeenth Region's date stamp on the back.

TRIAL EXAMINER: It is part of the exhibit and I accept it at face value. I realize this is the Seventeenth Region's stamp, and I will take official notice. I hold that this card was signed on or before the 30th of June and I will receive it in evidence.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 3-M, was received in evidence.)

* * * * *

98 Q. (By Mr. Wacknov) Mr. Bishop, directing your attention to August 17, 1966, did you happen to have a conversation with Mr. George Angle regarding the union? A. On August 17, yes.

Q. Do you recall where this conversation took place, Mr. Bishop? A. I believe that was in the control room at the plant.

Q. Do you recall who was present at the time? A. Myself, Mr. Angle, and I believe Corey Call.

99 TRIAL EXAMINER: Who is he?

THE WITNESS: Another workman, another operator, junior type operator.

Q. (By Mr. Wacknov) Mr. Bishop, who else was in the control room at the plant at this time? A. Well, I believe one or two of the operating personnel that were on duty were there and it seems like there were a couple or three personnel off duty there and some of Mr. Angle's employees from his drilling rigs were there. There had been a buffet type dinner at the plant that day, open house.

TRIAL EXAMINER: What time of day was this?

THE WITNESS: In the evening.

Q. (By Mr. Wacknov) It was a party, open house? A. Yes, it was an open house.

TRIAL EXAMINER: Were you on duty?

THE WITNESS: No, I was not.

Q. (By Mr. Wacknov) This conversation, who was involved in it? A. Mr. Angle and myself.

Q. Anyone else? A. Mr. Corey Call was standing there but I don't remember he had any great connection.

Q. Now, to the best of your recollection, Mr. Bishop, could you relate what was discussed between you and Mr. Angle during this

100 conversation?

TRIAL EXAMINER: What did Mr. Angle say to you and what did you say to him? A. If I remember correctly, I don't remember how it got started, but Mr. Angle said that we wouldn't have a chance to vote for at least a year and that in this year's time he would get rid of the people that were instigating this union, within this year's time that we would probably never get a chance to vote.

Q. (By Mr. Wacknov) Did he say anything else, Mr. Bishop, in regard to the union? A. Not that I can recall at this time.

* * * * *

Q. Did he say anything with regard to discharging employees, Mr. Bishop? A. I believe he mentioned that he'd, all I can recall that he said that he would get rid of the union instigators, that they

101 wouldn't be around to get to vote.

Q. Did he say which ones? A. He didn't name anybody, no.

Q. Did he limit the number that he would get rid of? A. Not that I recall, no.

Q. Mr. Bishop, directing your attention to September 13, 1966, did you happen to have another conversation with Mr. George Angle with regard to the union? A. What was that date again?

Q. September 13, 1966. A. Yes.

Q. Where did this conversation take place? A. In a private office at the plant.

Q. And who was present in this private office? A. Mr. Angle and myself.

Q. Do you know whose private office it was? A. No, I don't know. John Stiff had used that office for a while, but I don't know whose office you could actually classify it.

TRIAL EXAMINER: One of the offices at the plant?

THE WITNESS: Yes.

Q. (By Mr. Wacknov) Do you recall what time of the day this conversation took place? A. Approximately 11 o'clock at night.

Q. Were you on duty that night? A. Yes, I was.

102 Q. How did Mr. Angle begin this conversation? A. Well, he said that to forget that I ever worked there and to forget that I knew him, and that he was going to interview me just as if I had come that day for a job and just forget everything up through that day, that he was going to interview me for a job.

TRIAL EXAMINER: How did you come to be in the room?

THE WITNESS: No.

TRIAL EXAMINER: How did you get there?

THE WITNESS: I was informed by Norman Klein that Mr. Angle wanted to talk to me.

Q. (By Mr. Wacknov) Approximately how long did this conversation last? A. Ten or fifteen minutes.

Q. During the course of the conversation, was Mr. Angle angry? A. Yes.

Q. Did he give you any physical indication of expression of his anger? A. Well, he used a wall like it was a black board and drew imaginary pictures up and down on it and that is about all.

Q. Did he talk in a loud tone of voice? A. Yes.

Q. Was he red in the face? A. No, I didn't notice him red

in the face.

103 Q. To the best of your recollection, what did Mr. Angle say to you and what did you say to him during the interview? A. Well, he started out about forgetting I ever worked there and he went from that to showing me a letter, an anonymous letter that he had received and asked me if I had ever seen it, and I told him no, that I handn't and he gave me an opportunity to read the latter. I don't remember the exact contents of the letter. I do remember a small portion, that there was a list of six, seven names and this letter pointed out that the people that were named in the letter were sucks and brown nosers, and my name was on that list. Mr. Angle asked me what I thought about that and I said I would like to see the man who wrote the letter and I would like to talk to him personally. I was not a brown noser, I had never been called a brown noser and I thought the brown noser was about the lowest form of human life. And he asked me if I had written the letter, and I denied it because I hadn't. And he asked me if I thought the person who wrote the letter would be crazy or not, and I agreed it seemed the person was unbalanced who wrote the letter. He said, "Your name is on there, you know," and I said "Yes, I know that." And he said it was obvious that the person that would put their own name on the letter to throw off suspicion, and he said that your name is on there, so that doesn't leave you from my suspicion, and he asked me again if I wrote the letter, and I told him that I hadn't. And he asked

104 me if I thought a crazy man had written it, and I agreed that I felt that a nut had written the letter. And he asked me if I had seen another anonymous letter and showed me what it was, and I said yes, he had mailed me a copy of that particular letter through the mail. He asked me if I had written it and I said no, I hadn't written it. And he went on to say, then, that those two letters had been written on the office typewriter there at the plant and it was one of two shifts that wrote it and that my shift was one of those shifts, and he asked me again if I wrote the letter, and I told him that I had not.

From there we got talking about unions. He asked me if I was happy and I told him I wasn't. And --

TRIAL EXAMINER: (interrupting): Just plain happy. He asked you, "Are you happy?"

THE WITNESS: He said, "Are you happy with the plant?" In other words, how the things were going, and I told him, no, I wasn't. A. (continuing) -- and he said, then, I believe it was then that he said, well, that if I wasn't happy, I could go to, I believe he said, a million and one other jobs that were union jobs, that I could get the benefit we were asking him to give us.

Q. (By Mr. Wacknov) During the course of this conversation, did you talk about benefits? A. Not as I recall, not as I recall.

105 TRIAL EXAMINER: Go ahead.

Q. (By Mr. Wacknov) He just came out with the statement, "Are you happy?" A. I believe that is it. I don't recall the exact wording at this time.

Q. Go ahead. A. And he implied several times there were a million and one jobs that I could get that were union, and he said there are a thousand or so that aren't union where I can get these benefits, and kept on this, he repeated himself a few times about the amount of jobs that I could get elsewhere and, oh boy, my memory is weak --

Q. (Interrupting) Did he say anything about the union?
A. Yes. That is what I am trying to remember now.

TRIAL EXAMINER: Go ahead, next question, Mr. Wacknov.

Q. (By Mr. Wacknov) Did he say anything about the union election? A. The only thing I can remember is that we weren't going to get a chance to vote.

TRIAL EXAMINER: Did he say that?

THE WITNESS: As near as I can remember, yes, sir.

TRIAL EXAMINER: On September 13?

THE WITNESS: Yes; in the office.

TRIAL EXAMINER: Next question.

106 Q. (By Mr. Wacknov) Was there any discussion of retirement benefit? A. I believe I stated, then, that there, or during the meeting all I was interested in was a retirement program, and he said, "I don't have any retirement. Why should a young man like you have retirement?"

Q. Did he say anything about being a hundred per cent for them? A. He said that everybody who was not a hundred per cent happy, hundred per cent for him, there was no need for them to be there. He didn't want them there unless they were a hundred per cent happy and anyone who was not a hundred per cent happy would be gotten rid of.

Q. Did he ask you how you were going to vote in the election? A. Yes.

Q. How did he ask you that? A. He point blank asked, "How are you going to vote in the election?"

Q. What did you tell him? A. I told him that is the reason we were having a secret ballot. This nation was built on a democracy and part of that was to have a secret ballot. If I wanted to tell him who I was going to vote for on the presidential election, that was my business.

Q. What did he say? A. He said, "Democracy, hell. It

107 wouldn't be a democracy except for me, you would be out the gate." Those aren't the exact words.

TRIAL EXAMINER: We are after the exact words.

THE WITNESS: As near as I can remember, they are.

Q. (By Mr. Wacknov) Did he say anything about firing individuals who were not a hundred per cent for him? A. Yes.

Q. What did he say? A. I can't remember the exact words.

Q. What do you think he said? A. It seems like he said -- I don't think he ever used the word "fire" -- he said he was going to get rid of them.

Q. Did he ask you if you signed a union card? A. Not that I recall at this time; he might have. I don't remember.

Q. Do you recall approximately how the conversation ended? A. Yes. He said that he had made up his mind on what he was going to do with me, that I was going to be one of the first ones to go. And at this point I thought he was through and if he was through I would go on and walk down the road. He said, "Sit down, Flash, I see I have got your goat. Let's talk this out." We didn't talk for about a minute, we just stared at each other, and I can't remember exactly what the conversation was when he did start talking again, but I brought up the
108 fact, again, there was no need to talk to me any longer, that he had already made up his mind.

Q. Did he mention anything about agitators? A. He was going to get rid of all the agitators.

Q. Any kind? A. Union agitators.

Q. Did he mention anything about malcontent? A. Yes, malcontent was a common word with him.

Q. What else did he mention, if anything, with regard to the National Labor Relations Board election? A. Nothing I can recall at this moment.

Q. Did he mention the National Labor Relations Board? A. It seemed like he did, but I can't remember what he did say.

Q. Directing your attention, Mr. Bishop, to August 27, 1966, did you happen to have a conversation with a company supervisor in the pool hall in Otis, Kansas? A. Yes.

Q. Who was that? A. Norman Klein.

Q. Who is Norman Klein? A. I think at that time he was acting as plant manager to the plant supervisor.

Q. Approximately how long did this conversation last? A. Over a period of ten or fifteen minutes.

109 Q. Where was this? A. Otis Pool Hall, at the bar.

Q. Do you recall about what time this was? A. Late evening.

I don't remember the exact time.

Q. Mr. Bishop, what did he say to you and what did you say to him during this conversation? A. Well, we had had a lot of small talk, fish talk, and I don't know how it got around to the union, but he said that Mr. Angle had told him that he didn't care what the union said or did, he was going ahead and fire who he pleased and hire who he pleased, and gave two raises Norman knew of and a few others that were needed. And he was going to get rid of all the union agitators or organizers.

Q. You used the name Norman, you mean Norman Klein? A. Yes, sir.

Q. Mr. Bishop, directing your attention to September 20, 1966, were you discharged on that day? A. Yes, I was.

Q. How did your discharge come about, what were the circumstances? A. Well, I was in the control room, had a little walkie-talkie, I was talking with Dwayne Johnson, he was out in the yard, and I believe Norman Klein asked me to talk to Dwayne, Mr. Angle wanted to talk to Dwayne and myself. We went to Mr. Angle's office and there were a couple employees ahead of us, and Mr. Rodgers arrives last,

110 I believe. And Mr. Angle said, "Well, boys, I don't like long good byes", and handed us a check and a termination letter, if I remember correctly.

MR. WACKNOV: Mark this as G.C. 6.

(The document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q. (By Mr. Wacknov) I hand you what has been marked as General Counsel's Exhibit No. 6. What is that? A. This is a letter that or similar letter that I received as a termination letter.

Q. I note your name is not at the top; it is addressed to Mr. Russell Sims. Upon your discharge, Mr. Bishop, did you receive a letter exactly similar to this except your name was at the top?

A. It is exactly except for the name.

* * * * *

MR. WACKNOV: I would like to substitute this letter for the other and this would be as General Counsel's Exhibit 6.

MR. MARTIN: For the purpose of time, we have no objection to stipulating that this particular letter was given to all the dischargees of record on --

TRIAL EXAMINER: (interrupting) I want them in the record.

111 It is stipulated that General Counsel's Exhibit 6 is a letter that this man received on the termination and that similar letters were handed to Arel Rodgers, Russell Sims, Dwayne Johnson, Thomas Garrett and John Harris. Is that your stipulation, Mr. Martin?

MR. MARTIN: That is correct.

TRIAL EXAMINER: Exhibit 6 is received.

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(The document above referred to, heretofore marked General Counsel's Exhibit No. 6, was received in evidence.)

* * * * *

MR. MARTIN: Same time and place, Mr. Trial Examiner.

Q. (By Mr. Wacknov) What did Mr. Angle say to you, if anything, at this time? A. He said he didn't like long good byes and that that was our letter, that the reason we were terminated was explained in

112 the letter.

* * * * *

Q. How many different types of log books were there in the plant, Mr. Bishop, kept in the control room? A. Two that I recall.

Q. Do you recall what the names of them are? A. I believe one of them was called special log book and the other was just log book, or plant operation log book, I can't remember now.

Q. Would one of them be called the special orders book?

A. Yes, that is it.

Q. What is the special orders book? A. That consisted of

113 orders of Henry Tyler mostly and occasionally one from Buddy Owens or maybe Mr. Stiff.

* * * * *

Q. (By Mr. Wacknov) Who is Mr. Henry Tyler? A. He was the plant engineer.

Q. And he made most of the entries in this book? A. Yes, I believe he did.

Q. For what purpose was this special orders book used?

TRIAL EXAMINER: If you know, did you make any entries in the special orders book?

THE WITNESS: Not in the special, no. Never in the special. That was Henry Tyler's orders directed to the operating personnel.

Q. (By Mr. Wacknov) Now, at times Mr. Tyler would not be there at the plant? A. Yes, sometimes he wasn't there.

Q. When he was not there, did this book contain his orders? A. Yes. If he had any orders to leave, he left them in there.

Q. What did you do with this book? A. We read it and we followed the directions, if they pertained to you.

TRIAL EXAMINER: Wait a minute. When did you look in there?

114 THE WITNESS: When you come on the shift, there might be some order in there that you had to do in the next hour or so.

TRIAL EXAMINER: Would it be marked with your name?

THE WITNESS: They just bring it out in the shift. We all had separate areas and the way it was written we knew who had to do what.

Q. (By Mr. Wacknov) Did you have access to the book? A. Yes, it was on the table.

Q. Did the junior operators have access to it? A. Yes; everybody did.

Q. Including the senior operator? A. Yes.

Q. And you would receive instructions from this book? A. Yes.

* * * * *

119 Q. During the course of your job, did you use the special orders book? A. Yes.

TRIAL EXAMINER: He testified he looked in there to get orders. Now, who put orders in the special orders book?

THE WITNESS: Henry Tyler and Buddy Owens were the ones that put the majority of the orders, and I believe John Stiff did for a period of time that, I believe, Mr. Tyler was on vacation or had a leave of absence.

TRIAL EXAMINER: Go ahead. . . .

Q. (By Mr. Wacknov) Did the senior operators ever put entries in that special orders book? A. Not that I remember, not in the special orders book. . . .

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DIRECT EXAMINATION

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121 Q. (By Mr. Kelly) In connection with your experience with the plant, what communications or conversations, if any, did you ever have with any of the known management while you were there with respect to senior operators being your supervisors? A. I was never told by anybody that the senior operators would be my supervisors.

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122 CROSS EXAMINATION

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127 Q. (By Mr. Martin): Did you give a deposition in a case before the Federal District Court?

TRIAL EXAMINER: You mean testify or give a deposition?

THE WITNESS: I gave you a deposition. You were there.

Q. (By Mr. Martin) For the record, you gave a deposition under oath before the Federal District Court hearing, did you not? A. Yes, I gave you one.

Q. I am going to read to you from Page 28 of this deposition, Mr. Bishop, a question by your counsel or the counsel for the union.

My understanding, he was appearing on behalf of the union and you people at that time.

"Mr. Kelly, did you make application for membership in the union?"

128 Answer: "I signed one little card that was handed to me, and at the time I signed it, I was told it was not a membership card, nor was it an application to become a member. It was strictly to see who was interested in the union. That is it."

TRIAL EXAMINER: Do you remember that being asked, that question, and giving an answer?

THE WITNESS: I remember that question.

Q. (By Mr. Martin) Was that your answer? A. As near as I can remember, yes.

* * * * *

131 Q. (By Mr. Martin) I hand you what has been marked as Respondent's Exhibit No. 10 and ask you if you can identify that.

A. Yes, I received a copy of this when --

Q. (interrupting) Did you ever see Respondent's Exhibit No. 10 at any other time? A. Is this Respondent's No. 10?

Q. Yes. A. I believe Mr. Angle showed me this at the interview.

TRIAL EXAMINER: You both received it by mail and was

132 handed it by Angle?

THE WITNESS: Yes, and I believe he showed it to me at the interview.

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MR. WACKNOV: Mr. Trial Examiner, perhaps we could stipulate that each employee of the company received a copy of that letter through the mail with an accompanying letter from Mr. Angle.

133 TRIAL EXAMINER: Are you asking Mr. Martin to concede that?

MR. WACKNOV: Yes.

TRIAL EXAMINER: Do you care to?

MR. MARTIN: We will so stipulate.

TRIAL EXAMINER: Mr. Angle sent a copy of this to each employee with a covering letter?

MR. MARTIN: Yes, with a covering letter.

TRIAL EXAMINER: All right. You have a date on that. Was it before or after -- did you receive this in the mail before Mr. Angle showed it to you at the interview?

THE WITNESS: Yes.

MR. MARTIN: Let me get the letter, cover letter, that went with that. We will get that and submit it in a moment.

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135 REDIRECT EXAMINATION

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137 Q. (By Mr. Wacknov) Did you ever receive directions from a senior operator as to what to do? A. Not that I can ever recall, no.

138 Q. What did senior operators do that you saw? A. They operated the control room, all the valves and instruments in the control room they operated, and there might be a time that I would be out in the yard that Mr. Rodgers might tell me to do something strictly because I couldn't see the instrument to do it myself, like a dryer switch or freeze out change.

TRIAL EXAMINER: He called your attention to something you should be doing?

THE WITNESS: Something he could see that I ought to do inside and I couldn't see. I was outside.

TRIAL EXAMINER: Do you have any factual points you want to get from this witness?

Q. (By Mr. Wacknov) What if you were inside and could see the gauge? A. I would go do it.

Q. He wouldn't tell you? A. No, there was no need to.

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139 RECROSS-EXAMINATION

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142 Q. (By Mr. Martin) Let me phrase it this way, was anybody at the plant from the midnight shift until 8 in the morning you had that shift except yourself, Mr. Rodgers and the other junior operator? A. There were just three of us, that was it.

Q. That is all that there was at the plant? A. That was it.

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143 REDIRECT EXAMINATION

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TRIAL EXAMINER: Mr. Bishop, do you ever have occasion to ask for instructions during the midnight to 8 o'clock in the morning

144 shift?

THE WITNESS: Yes, I asked for instructions.

TRIAL EXAMINER: Whom did you ask?

THE WITNESS: I would go to Arel Rodgers.

TRIAL EXAMINER: Who is he?

THE WITNESS: He was the senior operator on that shift.

TRIAL EXAMINER: Under what circumstances would you go to him?

THE WITNESS: On something that I didn't know how to handle.

TRIAL EXAMINER: Can you recall an incident to describe?

THE WITNESS: We had some engine trouble on that shift, and I believe the engines were detonating, and I went to him to ask him because I didn't know what to do about it. That was beyond my knowledge.

TRIAL EXAMINER: Do you have any responsibility for the engines?

THE WITNESS: Yes, I had to look after them to make sure they ran right, shut them down, help start them up.

TRIAL EXAMINER: When there was something you didn't

understand, you went to whom?

THE WITNESS: Mr. Rodgers.

TRIAL EXAMINER: And he was the senior operator at that time?

THE WITNESS: Yes, he was.

145 TRIAL EXAMINER: Do you remember that incident? What did he tell you?

THE WITNESS: He told us to stand by to see if it got worse, to watch it, and we watched it, and if I remember correctly, the engine got worse, shut down, and I believe he called Henry Tyler at that time, and Henry Tyler, I think, sent Gerald Julian out to the plant.

TRIAL EXAMINER: What is Gerald Julian's job?

THE WITNESS: He is a maintenance man. He came out and put the engine back on stream.

TRIAL EXAMINER: Do you remember any other incidents?

THE WITNESS: All that week it seems like that engine was shut down.

TRIAL EXAMINER: What would you do?

THE WITNESS: I would speak to Mr. Rodgers when trouble started developing.

TRIAL EXAMINER: What was his reply?

THE WITNESS: Let him know when it got worse. About the second night he got in touch with Henry right away when the engine started to detonate, and Julian got out before the engine went down, but we lost it anyway.

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147 Whereupon

JOHN HARRIS

was called as a witness by an on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Wacknov) Would you state your name and address.

A. John S. Harris, Route 1, Box 161, Soap Lake, Hoisington.

Q. Mr. Harris, were you formerly employed by Kansas Refined Helium Company? A. Yes.

Q. Were you discharged on September 20, 1966? A. Yes, I was.

Q. What was your job description at the plant? A. B operator. Some called it junior, I called it B. I assumed it was B for my purposes.

Q. How long did you work at the plant? A. Approximately fourteen months.

Q. Did you begin working as a B operator? A. No, I started as a junior B operator.

Q. Mr. Harris, directing your attention to September 13, 1966, do you recall having a conversation with George Angle? A. Yes, I do.

148 Q. Do you recall where this conversation took place?
A. Yes, it took place in the rear office of the operations plant.

Q. Do you recall approximately what time of the day it was?
A. Approximately 11:30 at night to about a quarter or 30 minutes after 12.

* * * * *

Q. (By Mr. Wacknov) Was anyone else present in the room, Mr. Harris? A. Mr. John Angle.

Q. Anyone else? A. No.

Q. How did you come to be in Mr. Angle's room? A. Mr. Tyler came out to the plant area and asked me to go in and talk to him.

Q. Now, do you recall how Mr. Angle started this conversation with you? A. Yes, he said that he was going to simulate that he

149 was rehiring help, and he would start this and establish what he wanted to know as if I didn't work for him.

Q. Did he say what might be the outcome of the interview?
A. Well, about right then he said he was more or less going to make some changes and he wanted the information.

Q. Did he say what kind of changes? A. Well, not at that time, other than some people were causing trouble, the plant was upset, management was.

* * * * *

Q. (By Mr. Wacknov) Mr. Harris, after this initial statement by Mr. Angle, what did he say to you and what did you say to him during the course of this hour of conversation? A. Well, he reviewed my ability to do my work, which he said was, he had had good reports, and a little bit more about that, but nothing other than just that I had been doing my job and he was happy with it, and shortly thereafter he

150 asked me, pointblankly asked me, "Did you sign one of those cards?" and I said, "Yes, I did."

TRIAL EXAMINER: What did he say?

THE WITNESS: "Why?"

TRIAL EXAMINER: What did you say?

THE WITNESS: I told him, I tried to explain to him why I wanted it, and that was primarily like I said, the plant was, management-wise was pretty messed up, so to speak, and we wanted to know our policies for the plant, like insurance. There was, like for instance, there was one copy of the insurance plan in the plant and that's all we had, and anytime that we needed it we had to go find it, wherever it could be. It was in the file if we wanted to know something about insurance, and he had a general policy on sick leave which he said he would determine what would be a normal sick leave time and he would determine what it would be, and he had no specific time, but he would find out.

TRIAL EXAMINER: Did you discuss it with him at that time?

THE WITNESS: I didn't discuss, I stated it.

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151 TRIAL EXAMINER: What did he say?

THE WITNESS: I told him the reason I wanted a written policy, I told him I didn't think any other would do other than a written. He

told me he wasn't going to put anything in writing, and if I wanted a written policy I could go to a union place or go back to Beechcraft where I come from.

TRIAL EXAMINER: Is that the whole conversation?

THE WITNESS: No.

TRIAL EXAMINER: What went on next, what did you say and what did he say?

THE WITNESS: After that he said that he would -- he didn't like, he said he didn't have to make any written policy, and there was malcontent in the plant and that he was going to find out who it was and what was happening, and get rid of the people that was causing it, and after this statement he said he wasn't going to make a written policy and he kicked the chair, so I was a little upset.

TRIAL EXAMINER: He wasn't going to make a written policy?

THE WITNESS: Yes, and he kicked the chair.

TRIAL EXAMINER: This is your --

THE WITNESS (interrupting) I can go further.

TRIAL EXAMINER: Was there any further conversation? What did you say and what did he say?

THE WITNESS: He asked me if I was going to vote for the union if it come up for election, and I said yes, I would, and that was the first
152 time he asked me, and then we went on and talked about schooling and he asked me what my future plans was as far as the plant and my future, and I told him I would like to go back to school if I could arrage it some way, and he said this was good, that he could see why I would want to, but he didn't offer anything as far as help other than --

TRIAL EXAMINER (interrupting): Don't tell me what was not said, please tell me what was said.

THE WITNESS: That was about all that there was about the schooling, that's about all he said about the schooling. He said again, "Since I talked to you do you still think you would vote for the union?" and I said, "I think I would have to, yes."

TRIAL EXAMINER: What did he say?

THE WITNESS: I said, "I don't know what I'm going to do."

Q. (By Mr. Wacknov) What else did he say, Mr. Harris.

A. That's all he said, other than that he was going to get rid of the people in the plant that was malcontent, and he further said if you were for the union you were malcontent.

TRIAL EXAMINER: Did he actually say that?

THE WITNESS: Yes, he said that if you wanted the union you couldn't be all happy with his decisions, or you wouldn't want it, which stands to reason.

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153 Q. (By Mr. Wacknov) Mr. Harris, you heard the testimony of Mr. Bishop, who testified before you, regarding the dischage on September 29 in '66. Does your recollection of the event coincide with what Mr. Bishop said? A. Just about exactly.

Q. You received the same letter? A. Yes.

Q. Received a paycheck? A. Yes, and severance payment with the, on the check statement.

Q. What were the words? A. He didn't like long goodbyes, "Pick up our gear and get out."

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CROSS EXAMINATION

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154 Q. (By Mr. Martin) At the time you talked to Mr. Angle in this interview are you sure that Mr. Angle made the comment that if you were for the union you were malcontent? A. He didn't say it exactly like you said it.

Q. How did you say it? Did he say that or -- A. (interrupting) Similar to that.

Q. Tell me what you say he did say. A. He said if you were for the union you couldn't be all happy with his operation, so, therefore, you were malcontent, is actually what he said. If it's not worded

exactly the same, the meaning is still there.

* * * * *

155 Q. What were your comments with Mr. Angle about tension in the plant? A. I told him it was bad.

Q. What did you tell him? A. Everybody had everybody's throat, pretty near, you might say.

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Q. Didn't you and he discuss the fact that there was a lot of animosity in the plant? A. Yes.

Q. Did you and he discuss the anonymous letters? A. Yes, he showed those to me.

Q. How many did he show you? A. Two.

Q. And what was your conversation with Mr. Angle about those letters? A. I told him I didn't know anything about it, other than

156 I had seen one of them before.

Q. Did he ask you if you had signed them? A. Signed them? No, sir.

Q. Did he ask you if you had written them? A. No, no, he didn't ask if I had written them.

Q. What did he ask? A. He asked if I knew anything about them.

Q. What did you tell him? A. No.

Q. Did you talk at length about the company's operation and how it might be better? A. I talked to him --

Q. (Interrupting) He asked you a lot of questions about that, what did you suggest, things of that kind, didn't he? A. No, I was trying to tell him more than he was asking me.

Q. Didn't he ask you what was wrong at the plant? A. Yes, he asked me why.

Q. And you told him? A. I did.

Q. Didn't he ask you what might be done to correct the situation?

A. Right. He actually, he didn't say it in those words, he didn't say no, so I went ahead and explained.

Q. How long did you talk to him about the conditions of the
157 plant? A. Oh, I don't know, a few minutes, I suppose, and I told him --

Q. (Interrupting) Did he talk to you about the things, about self-respect? A. He might have said that, I don't recall at this time.

Q. Did you talk about things about your own personal future and philosophy? A. About the school.

Q. Did he offer to help you with the school? A. He offered to change a shift.

Q. He said, "If you want to get more schooling don't worry about that, we'll make arrangements to help you"? A. I don't recall that.

Q. What did he say? A. He said he "might be able to help me out," I believe is what he said.

Q. He talked to you about a number of things other than just union activities? A. Sure.

Q. How long did your conversation last? A. A little over an hour.

Q. Did he seem visibly upset? A. Yes.

Q. Did he tell you that he had his whole life invested in the
158 plant? A. Yes.

Q. How much did he tell you he would lose if the plant wasn't operated properly? A. He didn't state a price, but I --

Q. (Interrupting) What did he say? A. He said, "You suppose I'm making a killing on the helium, and I'm not making what you think," and I told him I knew what he was making, and I told him.

Q. So you discussed all of these things in that conversation? A. Yes.

* * * *

162 Whereupon

RUSSELL SIMS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Wacknov) Would you state your name and address,
163 please. A. Russell M. Sims, 1311 North First Street, Arkansas City, Kansas.

Q. Were you formerly employed at Kansas Refined Helium Company? A. Yes.

Q. How long did you work there, approximately? A. Approximately fourteen months.

Q. What was your job description with the company?
A. Senior operator.

Q. And were you terminted on September 20, 1966? A. I was.

* * * * *

171 Q. Did anyone from the beginning of your employment up until the National Labor Relations Board hearing on August 9, did any company official or supervisor ever refer to you as a supervisor?
A. No, sir.

Q. No one ever called you a supervisor? A. No, sir.

Q. Mr. Sims, directing your attention to September 13, 1966, did you have an interview with Mr. George Angle? A. I did.

Q. Do you recall, Mr. Sims, where this interview took place?
172 A. Yes, it was in one of the offices there at the plant.

Q. Do you recall approximately what time of the day it was?
A. I believe it was right after dinner.

TRIAL EXAMINER: What time is dinner?

THE WITNESS: About 12 o'clock, I think it was probably 1, or thereabouts.

TRIAL EXAMINER: Noon?

THE WITNESS: Yes.

Q. (By Mr. Wacknov) Who was present during the course of this conversation? A. Mr. Angle and I.

Q. No one else? A. No, sir.

Q. How did you happen to be in Mr. Angle's office? A. Somebody called and told me, I don't know who it was, that Mr. Angle wanted to see me.

Q. Approximately how long did this interview last? A. Oh, an hour and a half to two hours.

Q. To the best of your recollection, Mr. Sims, how did Mr. Angle begin the interview? A. He told me that he was going to interview me and that we were both pretending that I had never worked there, that he was going, this interview was going to be as though he knew nothing about me and I knew nothing about it, and I would explain to him my quality, wages and my future employment would be based
173 on this.

Q. To the best of your recollection, during this hour and a half interview what did he say to you and what did you say to him, Mr. Sims? A. Well, he told me his life history, about how he started at the age of 10 as a boy working, and then had been working full time ever since, and how he had been in the service, and told me all about the service time and the squadron that he was Captain or Major, or he was head of, anyway. He told me all about that and how he started this company and these companies, the Red Tiger Drilling Company, and some trucking company, and so on, and that he put all his life into it, and all his life's work. He told me that due to the fact that he had everything, his whole life's work in this, that in this trouble that come about in the plant, that he couldn't afford to mess around out there, that he was going to have these interviews, and that the people he didn't want he was going to eliminate, and the ones he did he was going to keep.

Q. Can you remember -- go ahead. A. He asked me if I had signed a union card, and I said -- no he didn't, that's not correct. He

said I had signed a union card. He said that I was one of the big union agitators, and he said all the senior operators were big union agitators, and he said that I'd brought Arel Rodgers from that helium with me, and Harry Harms, who is another senior operator, from Victors

174 Refinery Company, where he had previous employment, and he said, "They are both big union men," and I told him no, that that wasn't so, that Mr. Harms had been a union man at Victors and he had been on the committee at one time, but that Arel Rodgers had definitely been against the unions, and had, on occasion, made no bones about telling me he was against the union, and he said there was never any reason for a man to have a union, and this was at National Helium when he talked about this.

So he went on and said didn't the union representative give me some cards to hand out, and I said no, again, and he gave me a letter that he said was written, that he had received.

Q. How many letters did he show you, Mr. Sims? A. I think he showed me two.

Q. I hand you what has been marked as Respondent's Exhibit 10-A. I hand you that letter, and have you read it? A. Well, I didn't have to read it all. He handed it to me. I had seen one similar to it.

Q. Where had you seen one similar to it? A. One that read the same I had seen on the board, and he had sent me one in the mail.

Q. You saw one on the bulletin board at the company? A. Yes.

Q. Do you happen to know who posted it there? A. No, I don't.

Q. Did you see a note attached to it on the bulletin board?

175 A. Yes, there was a short letter that stated that this -- I don't remember everything it did say.

TRIAL EXAMINER: It's a short letter, that's all you need to say at this point.

THE WITNESS: All right.

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176 Q. (By Mr. Wacknov) Mr. Sims, I hand you this letter which has been marked as Respondent's 10-B. Is this the letter that was attached on the bulletin board to what has been marked as Respondent's Exhibit
177 10-A? A. Yes, sir.

Q. Now, Mr. Sims, can you continue with regard to your conversation between you and Mr. Angle during your interview? A. Mr. Angle told me that we were not going to have a union in the plant, that he had put his life's work into this, and that he wasn't going to let the National Labor Relations Board or the union or me or anybody else stand in his way, and he was going to run the plant to suit himself, and he wasn't going to take a chance of losing it, and he told me that he was going to decide who, he said that, "Everybody that has signed a union card, I'll find out who they are, and I'm going to fire them all, and anybody that I feel that's not 100 percent gung-ho for George A. Angle is going to be fired."

He said, "Due to the fact that working from the age of 10 and having people work for me, I have experience with people, and none of them are going to fool me," and he said, "I'll find out who they are, and if I have one man left here I'll find out who it is who's not 100 per cent for me, and I'll find out who it is and I'll fire him."

He also stated, let's see, he told me at one time that, oh, he said, "Russell, you pull a tiger by the tail long enough and he's going to turn on you and claw you to bits, and you have got one by the tail."

Q. Did he refer to himself as a "tiger"? A. Yes.

178 Q. Was he angry? A. Yes, he told me in one conversation that he was a tiger, --

Q. Was he angry at that time? A. (Continuing) -- and he was plenty tough.

Q. Was he angry? A. Yes.

Q. Did he show any physical indication of the anger? A. Yes, he shook his fist at me and banged on the wall a time or two, and got extremely loud at times.

Q. Mr. Sims, did Mr. Angle during the course of this conversation talk about the union election? A. Well, he told me that by the time he got through firing people there wasn't going to be anybody left to vote for the union.

Q. During the course of this conversation did he call you a supervisor? A. No, sir.

Q. Mr. Sims, were you ever told by any management personnel that you were not, in fact, a supervisor? A. Well, I was told by Mr. Henry Tyler that I couldn't take disciplinary action on anybody, that if we had a problem of that type, to call him.

TRIAL EXAMINER: When was that conversation, what led up to it?

179 THE WITNESS: It was sometime in the spring in 1966.

TRIAL EXAMINER: What led up to it?

THE WITNESS: There had been, there was a fellow worked there by the name of Bill Stahlman, and he had caused considerable trouble in the plant and so forth, and I had asked Mr. Tyler what to do about it, and that was his answer.

TRIAL EXAMINER: What did Mr. Tyler say?

THE WITNESS: To me?

TRIAL EXAMINER: Yes.

THE WITNESS: He told me when these disciplinary, anything in the line of disciplinary, anybody needed to be sent home or anything of that type, to call him and he'd take care of it.

Q. (By Mr. Wacknov) Mr. Sims, there were times when you, as a senior operator, and the two senior operators were the only people at the plant? A. Yes, sir.

Q. Were there other times when, other than the day shift, when

all the supervisors were there, were there other times during the other shifts when Mr. Tyler, Mr. Owens, or Mr. Klein might go out at the plant? A. Yes, sir.

Q. On what types of occasions were these? A. Oh, for service trouble at the plant or something, if we called Mr. Tyler about a problem if he felt it was necessary for him to come out he'd come out and if he didn't he'd tell us who to call out to take care of the
180 trouble.

Q. Did you have to call Mr. Tyler frequently? A. Whenever we had trouble.

Q. Would he come out any time of the night or day? A. When necessary. He was there many times when we were having trouble and stayed over many hours.

* * * * *

181 TRIAL EXAMINER: * * * Mr. Sims, as a senior operator, what were your duties, what did you do in the plant?

THE WITNESS: I ran the control board in the plant. We had a sizable control board size like I suppose with, I believe, with all the gauges et cetera, we had to watch and control some eight hundred on the board.

TRIAL EXAMINER: Do you know what the gauges showed and what functions were going on?

THE WITNESS: Yes.

TRIAL EXAMINER: You adjusted from time to time?

THE WITNESS: Yes.

TRIAL EXAMINER: You do this all along?

THE WITNESS: Yes.

TRIAL EXAMINER: Were there any other senior operators on duty with you?

THE WITNESS: No, sir.

TRIAL EXAMINER: Were there junior operators on duty with you?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: What did they do as far as you know?

THE WITNESS: They handled the equipment out in the plant proper itself, such as the freezeouts in the cold box that they had to watch, and the dryers they had to switch. They maintained and checked the compressors to see that they were working properly, and so forth.

182 TRIAL EXAMINER: Did you ever call on the junior operators to do anything?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Under what circumstances?

THE WITNESS: Well, just --

TRIAL EXAMINER (interrupting): Think back to a situation where you had to talk to a junior operator, and tell me how it came about.

THE WITNESS: Well, if something, say a gauge on the board showed something he didn't see --

TRIAL EXAMINER: A gauge on your board?

THE WITNESS: Yes.

(continuing): -- needed correction out in the plant, I would tell him to go out and do it.

TRIAL EXAMINER: I don't want to get into details. I'm not competent to judge, but were some of your gauges and instruments hooked in with some of theirs?

THE WITNESS: Everything, sir. The plant has fundamentally a control from the control room.

TRIAL EXAMINER: And if a situation arose in which a junior operator should have known that something had to be thrown, a switch, whatever else you do, and he didn't do it, would that show up on your instruments?

THE WITNESS: Not always, but most of the time. Sometimes,

183 depending on what it was, if it was serious enough and went far enough, it would show up, some were on the board.

TRIAL EXAMINER: On those circumstances did you call upon the junior operators to tell him what he should have done without your calling on him?

THE WITNESS: Yes.

TRIAL EXAMINER: Can you describe any other situations in which you had to talk to junior operators?

THE WITNESS: They come in, for instance, if we had trouble on an engine, they had heard an engine, like it had a bad knock or something, and they would come in and ask me about it, and I would ask them if they thought it was serious enough to shut down, and if they thought it was, why, I'd call Mr. Tyler or Mr. John Stiff, or whatever the instructions were that were left.

TRIAL EXAMINER: For what purpose did you call Tyler?

THE WITNESS: To find out what maintenance man should come out and look into it.

TRIAL EXAMINER: You knew a maintenance man was necessary at that point?

THE WITNESS: If the operator considered it necessary.

TRIAL EXAMINER: What was the normal night time, that is non-day operation, how many juniors and how many senior operators?

THE WITNESS: One senior operator and two junior operators.

184 TRIAL EXAMINER: But so long as the junior operator was doing his job perfectly, you didn't have to talk to him?

THE WITNESS: No, sir, it was routine.

TRIAL EXAMINER: Any further questions?

MR. WACKNOV: Yes, sir.

Q. (By Mr. Wacknov) Mr. Sims, how much time on an 8-hour shift would you spend in the control room? A. Practically all of it.

Q. Could you give me a statement as to the percentage?

TRIAL EXAMINER: "Practically all" is an answer.

What do you mean, "Practically all," 90 or more, or 99 and more by it?

THE WITNESS: Better than 90 per cent anyway.

Q. (By Mr. Wacknov) Was this a very technical operation?

TRIAL EXAMINER: That's purely conclusionary. Did you have some training in this?

THE WITNESS: I had training at National Helium Corporation.

TRIAL EXAMINER: Any academic training as an engineer?

THE WITNESS: No, sir.

TRIAL EXAMINER: Is it strictly on-the-job training?

THE WITNESS: Yes, sir.

* * * *

185 Q. What if it was time to switch a dryer, would you tell the junior operators when to switch the dryer? A. Most of the time they knew it themselves. Many times they went out and switched it, and then told me.

TRIAL EXAMINER: Do you switch dryers under fixed times or under fixed conditions?

THE WITNESS: Both. It's a fixed time, but if a condition, sometimes, we'll call it moisture, gets by the bed and goes on into the cold box, at such a time we would switch a dryer other than under normal conditions, which was normally about eight hours.

TRIAL EXAMINER: Is the junior operator watching a gauge that tells him when the dryer should be switched on?

THE WITNESS: There is one on the board for the junior operator to watch.

TRIAL EXAMINER: Would you switch on the dryer?

THE WITNESS: No, he would do that.

TRIAL EXAMINER: Does he have a gauge to watch?

186 THE WITNESS: Yes.

TRIAL EXAMINER: Is the junior operator around in your work place?

THE WITNESS: Yes, they are in and out all the time.

TRIAL EXAMINER: I don't know your case, Mr. Wacknov. If

you want to prove supervisory status you should have had a lot more information. We have it in all directions now.

MR. WACKNOV: Mr. Trial Examiner, I want to make it clear we are not trying to prove supervisory status, we are trying to prove they are not supervisors within the meaning.

TRIAL EXAMINER: I'm not concerned with what you are trying to prove. I'm looking for facts. So should you, as a government employee, be looking for the facts, not a preordained conclusion. I want all the facts on this.

MR. WACKNOV: Yes.

Q. (By Mr. Wacknov) Sometimes the junior operators are in the control room with you? A. Yes, sir.

Q. What if they see a gauge that says the dryers need to be switched? A. They switch.

Q. Do you tell them? A. No.

Q. What if they see a gauge that says something needed to be
187 done. Do you tell them? A. No.

Q. When do you have to tell them? A. When they miss it.

Q. Are there times when you missed it? A. Yes.

Q. Are there times when they told you? A. Yes.

Q. If they are out in the plant they can't very well see the dials, controls, and knobs? A. No.

Q. Do you have any way to contact them if they were out in the plant? A. Yes, we have a speaker.

TRIAL EXAMINER: Loud speaker with horns at various places?

THE WITNESS: Yes.

TRIAL EXAMINER: You have a mike for it?

THE WITNESS: Yes.

Q. (By Mr. Wacknov) Would you, upon observation of the instrument panel give directions to the employees outside? A. Yes, sir.

Q. Mr. Sims, did you hear the testimony of Mr. Bishop this morning? A. Part of it.

Q. With regard to the various log books at the plant? A. Yes.

188 Q. What has been marked as General Counsel's Exhibit No. 7 is a special orders book. Mr. Sims, do you have occasion to use that special orders book? A. Yes, sir.

Q. In your own words, would you please describe what it is? A. It's the book the orders were left by Mr. Tyler or Mr. Still to the people on the evening and midnight shift or on the weekend, what we were to do. Anything that was not of a routine nature they wrote it in here, and if they had any knowledge that we were to have, or we were having possibly trouble with one of the engines or anything of that nature, we would leave orders as to who we were to call, either them or if they were certain, if they had an engine knocking or that type, they would leave information as to whom we were to call.

TRIAL EXAMINER: What kind of engines, gasoline, piston?

THE WITNESS: Gas.

TRIAL EXAMINER: Piston engines?

THE WITNESS: Yes, it was driven

* * * * *

191 TRIAL EXAMINER: Read it as if you were coming into the plant on duty.

THE WITNESS: They had valves on this line that you could open and bleed this out.

TRIAL EXAMINER: That was your job?

THE WITNESS: No, sir.

TRIAL EXAMINER: Whose job?

THE WITNESS: Junior operators' job.

TRIAL EXAMINER: When he read that would you pay any further attention to it, when you looked at the special orders' book you are looking for things directed to you?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Is that directed to you?

THE WITNESS: No, sir, but we had to read these.

192 TRIAL EXAMINER: Granted you read it, would you do anything about it?

THE WITNESS: If the junior operator would not, I'd call his attention to it.

Q. (By Mr. Wacknov) If the junior operator did do something about it you wouldn't have to call his attention to it? A. No.

TRIAL EXAMINER: How would you know if the junior operator on your shift did it or not?

THE WTINESS: If he came in and read the log book and read it, I knew he did it.

TRIAL EXAMINER: Do you and the junior operator come in at the same time?

THE WITNESS: Yes.

TRIAL EXAMINER: Would you read it together?

THE WITNESS: Sometimes together, times there would be a few minutes between, sometimes he would call my attention to it, times I would call his attention to it.

TRIAL EXAMINER: What would you do after having seen it, not having been called upon to do anything about it, would you check at any later time to see if he had done it?

THE WITNESS: Yes, I'd ask if he had done it.

TRIAL EXAMINER: How long would you give him before asking?

193 THE WITNESS: The shift. I would give him the shift to do it.

TRIAL EXAMINER: Would you ask him sometime before the end of the shift, would you ask him, "Did you blow out that particular separator?"

THE WITNESS: Yes.

TRIAL EXAMINER: And you considered it your job to ask him before the end of the shift if he had done it?

THE WITNESS: Yes.

TRIAL EXAMINER: He would say either yes or no, wouldn't he?

THE WITNESS: Yes.

TRIAL EXAMINER: If he said yes, that was the end of it?

THE WITNESS: Right.

TRIAL EXAMINER: If he said no?

THE WITNESS: I would ask him if he was going to do it.

TRIAL EXAMINER: What was his answer to that normally?

THE WITNESS: He'd say he would go do it.

* * * *

197 Conference Room,
Federal Office Building,
Great Bend, Kansas,
Thursday, January 19, 1967.

* * * *

RUSSELL M. SIMS

199 was called as a witness by and on behalf of the General Counsel, resumed the stand, was examined and testified as follows:

* * * *

TRIAL EXAMINER: Wait a minute. You missed the import of your conversation.

Did Mr. Angle ask you if you had distributed cards?

200 THE WITNESS: He asked me if I had handed out cards given to me by the union representative, and I told him no.

TRIAL EXAMINER: But you had, in fact, done so?

THE WITNESS: But they were not given to me by the gentleman in question.

Q. (By Mr. Wacknov) Mr. Sims, I hand you what has been marked as General Counsel's Exhibit 3-E. Would you please identify that exhibit? A. It is a membership application signed by Mr. Tom Garrett of Great Bend, Kansas.

TRIAL EXAMINER: Did you ever see it before?

THE WITNESS: Yes, sir.

Q. (By Mr. Wacknov) Mr. Sims, did you give this card to Mr. Garrett? A. Yes.

Q. Did he sign it in your presence? A. Yes, sir.

Q. Did he give it back to you? A. Yes, sir.

Q. What date was it signed? A. 6-22-66.

Q. Was anyone with you at the time you gave this card to Mr. Garrett? A. I don't know.

MR. WACKNOV: I offer General Counsel's Exhibit 3-E into evidence.

* * * *

203 TRIAL EXAMINER: We know all about that. The objection is overruled. The card is received.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 3-E, was received in evidence.)

Q. (By Mr. Wacknov) Did you give this card to any union representative after it was signed by Mr. Garrett? A. I did.

Q. To whom did you give it? A. Mr. Patton.

Q. I hand you what has been marked as General Counsel's Ex-
204 hibit No. 3-R. Would you please identify this exhibit? A. That is one I gave Jim Ham.

Q. That is a union authorization card? A. Yes.

* * * *

Q. (By Mr. Wacknov) Is that, was that card signed by Mr. Ham? A. Yes, it was.

Q. Did he give it back to you? A. Yes.

Q. On what date did he sign it? A. 6-30-66.

MR. WACKNOV: I offer General Counsel's Exhibit No. 3-R into evidence.

* * * *

209 MR. MARTIN: We do object to the introduction.

TRIAL EXAMINER: Let me see it, please.

The objection is overruled. The document is received as adequate prima facie proof. If you have anything further you will carry the burden.

Proceed, Mr. Wacknov.

Q. (By Mr. Wacknov) Mr. Sims, I hand you what has been marked as General Counsel's Exhibit 3-Q. Will you please identify that exhibit? A. This is the membership application card signed by Mr. William F. Pickerill.

Q. Did you give the card to Mr. Pickerill? A. Yes, I did.

210 Q. Is it dated? A. Yes, it is.

Q. Is it dated on the date on which Mr. Pickerill signed it? A. Yes, I think he signed it.

Q. You believe he put the date on there? A. Yes.

MR. WACKNOV: I offer General Counsel's Exhibit 3-Q into evidence.

TRIAL EXAMINER: Show it to Mr. Martin.

MR. MARTIN: May I take the witness on voir dire, Your Honor?

TRIAL EXAMINER: Yes.

Q. (By Mr. Martin) Mr. Sims, where were you when you obtained this Exhibit 4-Q? A. At the plant.

Q. Where at the plant? A. When I talked to Bill, I was either in the control room or in one of the offices.

Q. Who else, if anyone, did you get a card from that same evening and same time? A. I believe Mr. Weinman.

* * * *

211 TRIAL EXAMINER: That would go to weight. The Pickerill card is dated July 2 which, of course, might be important in itself, but that is not a matter for here and now. The card will be received. There is adequate prima facie proof that it was signed in the presence of a witness.

(The document above referred to, heretofore Marked General Counsel's Exhibit No. 3-Q, was received in evidence.)

Q. (By Mr. Wacknov) I hand you what has marked as General Counsel's Exhibit 3-P. Would you please identify this exhibit? A. Ronald J. Weinman, a membership application card.

Q. Did you give it to Mr. Weinman? A. I did.

Q. Did he sign it? A. Yes.

Q. Did he give it back to you? A. Yes, he did.

Q. What date appears thereon? A. 7-2-66.

212 Q. Is that the date on which Mr. Weinman signed the card? A. That is right.

MR. WACKNOV: I offer Exhibit 3-P into evidence.

TRIAL EXAMINER: Did you see him sign it?

THE WITNESS: Yes, sir.

* * * *

213 TRIAL EXAMINER: The Exhibit is received.

* * * *

214 Q. (By Mr. Wacknov) Mr. Sims, the last three cards which we have identified which will be General Counsel's Exhibits 3-Q, 3-R, and 3-P, what did you do with those cards after they were handed back to you from these individuals who signed them? A. I sent them to Mr. Hager Patton.

Q. Mr. Sims, I show you what has been marked as General Counsel's Exhibit No. 3-0. Would you please identify this exhibit? A. This is a membership, union application card for Jack E. Durbin of Hoisington.

Q. Did you give that card to Mr. Durbin? A. Yes, I did.

Q. Did he sign it? A. Yes, he did.

Q. Did he sign it on the date that appears on the top of the card? A. Yes.

215 Q. And that date is June 27, '66? A. Yes.

MR. WACKNOV: I offer General Counsel's Exhibit No. 3-0 into evidence.

* * * *

218 TRIAL EXAMINER: The objection is overruled and the card is received.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 3-0, was received in evidence.)

TRIAL EXAMINER: Proceed.

Q. (By Mr. Wacknov) I hand you what has been marked as General Counsel's Exhibit No. 3-L. Will you please identify this exhibit? A. This is a membership application card to the union signed by Mr. Gerald L. Julian of Albert, Kansas.

Q. Did you give Mr. Julian the card? A. Yes, sir.

Q. Did he sign it in front of you? A. Yes, he did.

Q. Did he hand it back to you? A. Yes, he did.

Q. And the date appears there as the date you gave him the card and it was signed? A. I believe so, sir.

Q. What did you do with this card after Mr. Julian gave it back to you? A. I sent it in to Mr. Patton.

219 MR. WACKNOV: I offer Exhibit 3-L.

* * * *

Q. (By Mr. Martin) I notice a witness signature on this 3-L of H. Patton. Did H. Patton witness this signature? A. I did.

Q. I am asking you whether or not H. Patton witnessed it, Mr. Sims. A. I don't think so.

Q. Do you know? A. I don't think he could have.

Q. Were you there when it was signed? A. Yes.

Q. And Mr. Patton was not there? A. I don't believe so.

Q. Was he there or not, do you know? A. No.

Q. The same H. Patton is in error? A. That is right.

Q. I notice a date of 6-23-66. Who placed that date on this card? A. I think Mr. Julian did, to the best of my knowledge.

Q. But you don't know? A. I wouldn't swear to it.

* * * *

221 TRIAL EXAMINER: Overruled. Prima facie evidence is present. May I see that card?

(The document above referred to, heretofore marked General Counsel's Exhibit No. 3-L, was received in evidence.)

Q. (By Mr. Wacknov) Mr. Sims, I hand you what has been marked as General Counsel's Exhibit No. 3-N. Will you please identify that exhibit? A. This is a membership application card filled out and signed by Mr. W. L. Roberts of Otis, Kansas.

222 Q. Did you give Mr. Roberts that card? A. Yes.

Q. Did he sign it? A. Yes.

Q. In front of you? A. Yes, he did.

Q. Is the date that appears thereon the date on which it was signed? A. Yes, sir.

Q. What did you do with the card after he gave it back to you? A. I sent it in to Mr. Patton with the others.

MR. WACKNOV: I offer 3-N into evidence.

* * * *

223 TRIAL EXAMINER: The objection is overruled. The card is received, that is, 3-N, into evidence.

* * * *

224 Q. (By Mr. Wacknov) At the time of your discharge on September 20, 1966, what were the circumstances under which you were discharged? A. I was called in to the office, and there were a number of other of the men that were there that were discharged.

* * * *

225 Q. (By Mr. Wacknov) Mr. Sims, at the time of your discharge did you have any conversation with Mr. Angle? A. Yes, sir, I did.

Q. Will you please relate what you said to him and what he said to you during the course of this conversation? A. I stayed after the rest of the men left and asked Mr. Angle his reasons for firing us. He said that he stated them before and that he had them in the letter, but he went ahead and told me anyway. He related a number of things in the interview.

TRIAL EXAMINER: Please state them.

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Go ahead; this is the time to state them.

A. (Continuing) He told me about the fact that he had put all of his life's work into this, the same as he told me before in the interview,

226 and he told me that he wasn't going to put up with the union coming in and telling him what to do, and that we, the ones that were discharged, were the ones that caused all the trouble in the plant and that if he got rid of us, why, he was going to scare the rest of the men in the plant.

He also said during this talk that if he had any doubts about -- well, first he said that he knew there were some other men in the plant who had lied to him about their signing union cards, and he would find out who they were and that he would fire them. He said, "I am going to get everybody that had anything to do with it. It may take me a day, week or six months, however long, but I will find them all."

He told me how much money he had invested in the plant and how much he had borrowed from the bank and he told me that since he did have his life and life's work invested in this he wasn't letting anybody -- he said, "I am not going to let the N.L.R.B., the Union, or anybody else tell me what to do."

He also told me that he had hired Mr. Martin as a lawyer and that it had cost him some $5,000 already and that he didn't need him any more, that he was going to take care of it himself in his own way. Then he told me about, he said, "Russ, if you knew all of the troubles that I've had and the troubles, it would just make you cry". * * *

* * * * *

227 THE WITNESS: I told him that I asked him how he could justify his conscience in the firing of this group of men and getting innocent men in the process, and he said he didn't care, that he was going to do anything he had to do to protect himself.

Let's see -- oh, he told me that Mr. Tyler and Mr. Klein had went to bat for me, that they had had discussions about this, apparently beforehand, but anyway, he said they have gone to bat for

me, and they said I was a top operator and my work was excellent, that there was nothing wrong with it.

I asked why they were firing me and he said, "You were causing me trouble at the start of this thing here and I just don't want you here."

TRIAL EXAMINER: Is that all you recall?

THE WITNESS: At the moment, yes, sir.

Q. (By Mr. Wacknov) Mr. Sims, approximately how long did this conversation last between you and Mr. Angle? A. Twenty or thirty minutes.

* * * * *

230 CROSS-EXAMINATION

* * * * *

236 Q. (By Mr. Martin) Mr. Sims, I am going to hand you what has been marked as Respondent's Exhibit 9. A. Yes, sir.

Q. Mr. Kelly asked you if you had written, or I believe he used the word "composed" or typed that document. A. No, I did not.

Q. Have you ever seen it before? A. Yes.

237 Q. When did you see it? A. Down at the hearing in Wichita.

Q. Do you recall was that the only time you have seen that document? A. Yes, sir.

Q. Mr. Sims, are you familiar with the word "dichotomy"? A. Yes, sir.

Q. Did you ever use the word? A. I think I used it in my statement.

Q. What about the word "assuaged", did you ever use that word? A. I don't think so.

Q. What about the word "grandiose", did you ever use that word? A. I think I have used it.

Q. When you type Mr. Sims, do you ever strike over letters? A. Yes, sir, once in a while depending on what I am typing.

Q. Do you also use a block form of type when you type?

A. Depending on what I am typing.

Q. Do you know what I mean by a block form of type?

A. Yes.

Q. What am I referring to? A. Typing straight down the page rather than indenting.

* * * * *

238 Q. (By Mr. Martin) Let me ask you about this Exhibit No. 10-A. When was the first time you saw that exhibit? A. Mr. Angle sent it to us in the letter.

Q. That is the first time you ever saw it? A. Yes.

* * * * *

TRIAL EXAMINER: * * *

Did you testify concerning that letter?

239 THE WITNESS: Yes.

Q. (By Mr. Martin) What did you testify the first time in district court when you testified about it? A. I didn't recall seeing it.

Q. And what did you testify the second time you testified?

A. That I thought this might possibly have been the letter that we saw at the plant at one time, but --

TRIAL EXAMINER (interrupting): Where in the plant?

THE WITNESS: If this is the same letter, it was in Mr. Klein's desk.

TRIAL EXAMINER: All right; go ahead, Mr. Martin.

Q. (By Mr. Martin) You are testifying now that you have never seen this before the time it was sent to you by Mr. Angle? A. I am testifying if that is the letter that was in that desk, why, I saw it.

Q. I am asking you, Mr. Sims, have you ever seen this letter --

A. (Interrupting) I don't know positively.

* * * * *

Q. (By Mr. Martin) Is it your testimony that you did or did not see Respondent's Exhibit 10-A before it was mailed to you by Mr. Angle? A. I think that is probably the letter I saw, but I don't
240 know that.

Q. The first time you testified in this courtroom a moment ago you testified the first time you had seen it was when Mr. Angle -- A. (Interrupting) That is the first time I am positive that was the letter, yes.

Q. When did you see Respondent's Exhibit 10-A, at the plant earlier than the time Mr. Angle sent it to you? A. Well, I don't recall which day it was.

Q. Where was it? A. It was in, I believe, in Norman Klein's office, in his desk.

Q. What were you doing in Norman Klein's desk? A. I had looked through the plant for, as I recall, for an insurance policy and I had looked through the files and Mr. Myers and I looked in Henry's desk.

Q. Who is Henry? A. Henry Tyler, the plant superintendent.

Q. What time of day or night was this? A. I believe we were on the morning shift.

Q. What is the morning shift? A. Midnight to 8 o'clock in the morning.

Q. Who is present on the morning shift? A. Myself and -- on my shift, on the shift we were on?

241 TRIAL EXAMINER: Are the same men generally on the same shift and you all move around together?

THE WITNESS: Yes, sir, senior operator and two junior operators.

Q. (By Mr. Martin) What were you, senior operator?
A. Yes.

Q. Who were your two junior operators? A. Tom Garrett and John Wakulich.

Q. Who asked you for an insurance policy? A. Mr. Wakulich.

Q. What did he ask you about the insurance? A. I don't recall. He wanted to see the policy.

Q. You had gone up to look for it? A. Yes.

Q. It was Mr. Wakulich's policy you were looking for? A. No, it is a general policy.

Q. You looked for it? A. Yes.

Q. While you were there what did you type? A. I don't know I typed anything.

Q. How long were you up there looking for this? A. I don't know.

Q. What is your best estimate?

TRIAL EXAMINER: Can you estimate?

THE WITNESS: No, I can't.

242 TRIAL EXAMINER: The witness can't.

Next question.

Q. (By Mr. Martin) Who did you leave in control of the control board while you were gone? A. Mr. Wakulich.

Q. Who told him to take the control board? A. I did.

Q. What did you tell him to do while he was on the control board while you were gone? A. To watch it and if anything went wrong while I was gone to call me.

Q. Did you go in to check on it once in a while? A. Sure.

Q. You went back to check on it? A. At this specific time?

Q. When you were looking for the insurance policy were you going back in to the control room to see how Wakulich was getting along? A. Yes.

Q. You don't know how long you were gone? A. No.

Q. Did you take Mr. Wakulich's place out of the control room? A. Later on that night I did.

Q. What time was that? A. I don't know for sure.

243 Q. Do you have any estimate? A. No.

Q. Was it between 12 midnight, and 8:00 a.m.? A. Yes.

Q. What did you do with the control room while you took Mr. Wakulich's place? A. Tom Garrett was there.

Q. Did you tell him to watch the control board? A. Yes.

Q. What did you and Mr. Wakulich then do? A. I showed him the letter to see if it was it.

Q. You took it out of the desk drawer? A. Yes.

Q. And you showed it to Wakulich? A. Yes.

Q. Who is Mr. Klein? A. He became plant manager after Mr. Buddy Owens left.

Q. Had he ever asked you to get in his desk? A. No.

Q. Did he ever give you authority to get in his desk?
A. No.

Q. What about Mr. Wakulich, what did you and he do when you showed him this particular letter? A. He read it.

244 Q. Did you read it? A. Yes.

Q. What did you say to Mr. Wakulich? A. That I don't recall.

Q. What did Mr. Wakulich say to you? A. I don't recall that either.

Q. You don't recall anything after seeing that letter?
A. We said something, but I don't recall.

Q. Do you have any recollection? A. No.

Q. Did you leave that room, then, Mr. Wakulich and you together?
A. I assume we did.

Q. Where did you go? A. I suppose back to the control room.

Q. What did you do then? A. I don't know.

Q. Didn't you get Mr. Garrett and take him up to the same place? A. I may have showed it to him, too.

Q. When you and Mr. Garrett left what did you tell Wakulich

about the board? A. I told him to watch the board.

Q. Then you took Mr. Garrett in and again you got into Mr. Klein's desk and showed him this exhibit? A. That is right.

245 Q. What did Mr. Garrett say? A. I don't recall.

Q. What did you say to Mr. Garrett? A. I don't know.

Q. What did you do with the letter? A. Put it back in there.

Q. In Mr. Klein's desk? A. Yes.

Q. Did you attend a steak dinner that --

Your Honor, has Exhibit No. 10-A been introduced?

TRIAL EXAMINER: Yes, 10-A is in evidence.

Q. (By Mr. Martin) Did you attend a steak dinner that Mr. Angle gave sometime in July? A. Yes, I did.

Q. And did you stay throughout the steak dinner? A. No, I did not, sir.

Q. Did you then leave early? A. Yes, sir.

Q. Where did you go when you left? A. I went back to the plant.

Q. Do you recall when this steak dinner took place? A. Not exactly the date.

Q. When did you learn what had been said at the steak dinner after you left, to whom did you first talk about it? A. I believe

246 it was the next evening.

Q. And from whom did you learn what was said? A. I don't know, some of the fellows that had been there.

Q. Didn't you talk to Mr. Johnson about it? A. I suppose I did if he was there.

Q. Didn't he come out to the plant where you were when you were out at the plant and tell you what had happened on the midnight to 8 shift? A. I don't recall.

Q. You remember that he didn't? A. No.

Q. Do you have any recollection? A. It wasn't that important then as to time or date or anything else. This has just become important.

* * * * *

248 Q. (By Mr. Martin) Have you ever when you use the word "he" when referring to Buddy Owens, have you ever capitalized the word "he"? A. It is possible; I don't know what I did.

* * * * *

251 Q. Did Mr. Owens have a habit of coming out to the plant and taking control physically of valves and controls that irritated the employees? A. He had as far as junior operators.

* * * * *

252 Q. Had there been complaints? A. Yes, there had been.

Q. Did you as a senior operator, didn't you have a complaint that he interfered with junior operators instead of going through you? A. Yes.

Q. It was distressing that he did move the valves and such? A. Yes.

Q. What was it that you, let me ask you this, with the Examiner's permission. Did you like Mr. Owens? A. Yes.

Q. Did you think Mr. Owens was fair? A. In some things as far as the job I didn't think he was.

* * * * *

256 Q. Where did your interview take place with Mr. Angle?

TRIAL EXAMINER: Which interview?

MR. MARTIN: The September 20th interview. A. In Mr. Klein's office.

Q. (By Mr. Martin) Is that office right next door to the latrine? A. Yes.

Q. Had a number of interviews been taking place in that office? A. Yes.

Q. Had you been going into the latrine and overhearing what had been said in these conversations? A. No.

Q. You had not been in the latrine? A. Yes.

Q. You had not heard what had been said? A. I had heard when he got to screaming at times.

Q. You heard it? A. I didn't hear exactly what he said, but I heard him hollering.

257 Q. To whom was he talking? A. I don't know.

* * * * *

258 Q. During the days you were on that shift who was with you? A. Tom Garrett and John Wakulich.

Q. At the time you and Garrett and Wakulich were on the shift together did Mr. Angle during any of those days have occasion to leave the building and leave you and Wakulich and Garrett alone in the building? A. I suppose.

Q. Did you not go into the office he was using and get into the briefcase and take notes that Mr. Angle was using? A. No, I did not.

Q. Did you not show those to Mr. Wakulich? A. No, I did not.

* * * * *

264 Q. (By Mr. Martin) You discussed raises with the junior operators that work with you with Mr. Tyler? A. Yes, I did.

Q. In the case of raises where granted did you go with Mr. Tyler to the men to discuss the raise with them? A. No, I did not.

Q. Did you not go with Mr. Tyler to the men? A. Yes.

Q. You and Mr. Tyler went to discuss the raise with the man and you said you were with him and he talked to the men? A. Yes.

Q. What did Mr. Tyler say to the people? A. He told them he thought they deserved a raise.

Q. Did he talk to them about any deficiencies in their work? A. I don't really know.

Q. Wasn't there some discussion between you and Mr. Tyler as to whether there should be a raise for Garrett and you thought he should? A. Yes, he asked me that.

Q. You recommended that.

Did Mr. Garrett have some problem in the area of numbers?

A. Yes, he did.

TRIAL EXAMINER: What do you mean by that? I am supposed to understand what you are talking about.

265 Q. (By Mr. Martin) What was the problem? A. We have many, many valves which have numbers in the plant and many lines that have valves and they are all in numbers. The compressors all have numbers, the cold boxes are numbered; everything in the plant had numbers of various types and they also have names, and it takes quite some time to learn all of these things that are there.

Q. Was Mr. Garrett having the problem with the numbers in relationship of what you have just discussed? A. Not a problem, as such. He wasn't as fast as Mr. John Wakulich, but he was all right.

TRIAL EXAMINER: Tom Garrett was not as fast as Wakulich at the numbers?

THE WITNESS: Yes.

Q. (By Mr. Martin) Did you recommend to Mr. Tyler, notwithstanding the fact, that he get a raise? A. I told him I thought his work was fine, which it was.

* * * * *

266 Q. (By Mr. Martin) You testified yesterday concerning an incident with Mr. Stahlman. Did I understand your testimony to be that you did direct Mr. Stahlman to do some act and he refused?

267 A. I was told by supervision to have Mr. Stahlman clean out the tank or take some rags and dry out the bottom of a new tank we had put in.

Q. And you told him to do it, didn't you, you told Stahlman to commit the act, didn't you? A. Yes.

* * * * *

Q. Mr. Sims, as well as the plant being operated by a senior operator and two junior operators from approximately 5 in the evening

until 8 o'clock in the morning, which I think you discussed yesterday, was it not also only junior operators and senior operators on duty on the week ends? A. That is correct.

Q. But the plant runs 24 hours a day, seven days a week?
A. That is right, unless it is shut down.

* * * * *

276 Q. (By Mr. Martin) How long was your conversation with Mr. Angle on September 13th? A. Probably half an hour, rather an hour and a half to two hours.

Q. In this conversation did you and Mr. Angle discuss other things other than what you have related on direct examination?
A. I am sure, yes.

Q. Did you discuss the fact that things were tense at the plant?
A. Yes.

277 Q. Did you talk about things being upset at the plant? A. Yes.

Q. Did you talk about your own personal future? A. He said he was going to decide from this interview whether or not I stayed there.

* * * * *

278 Q. (By Mr. Martin) Mr. Sims, did you have instructions to approve the time card of the junior operators that work for you?
A. Yes, sir.

Q. Did you approve their time card? A. Yes, sir.

TRIAL EXAMINER: What do you mean by approving?

THE WITNESS: There is a place to have the signature on the bottom. It says, "Approval of time," signifying that the man was there on the job.

Q. (By Mr. Martin) Mr. Sims, did you at any time take any written matter from any of the desks or files of the company or any of its management personnel in order to distribute that information to other employees?
A. I have taken--

TRIAL EXAMINER (interrupting): Why don't you just say yes if you have. A. Yes, sir.

Q. (By Mr. Martin) Can you identify what you did take and when and to whom you gave it? A. Not particularly, it didn't make any distinct impression, at least at the time.

* * * * *

279 REDIRECT EXAMINATION

Q. (By Mr. Wacknov) Mr. Sims, in the course of your employment at the plant, would you from time to time go into the various offices? A. Yes.

Q. Would you look through various drawers? A. Yes, I have.

Q. Did you do this at times when the management personnel were there? A. Yes, I have.

Q. Did you do it sometimes when they weren't there?

A. Yes, sir.

Q. Did they ever tell you not to do this? A. No, sir.

Q. Did you sometimes take things out of their drawers?

A. Yes, sir.

Q. Did you sometimes do it in their presence? A. Yes, sir.

* * * * *

282 Q. In regard to the raise increase for Mr. Garrett, did you recommend or tell Mr. Tyler, how did this come about, did he talk to you first or did you talk to him? A. I can't recall for sure. I know I talked to Henry.

TRIAL EXAMINER: Tyler?

283 THE WITNESS: Yes.

TRIAL EXAMINER: A couple of months from now I won't know Henry.

THE WITNESS: I am sorry. A. (Continuing) And it had come--it was generally talked around the plant that they were going to give raises for one or two of the junior operators and I went to Henry and told him that I felt that John Wakulich and Tom Garrett and John Harris were just as qualified and knew their job just as well and were doing just as good a job as any of the others.

Q. (By Mr. Wacknov) What did he say? A. He said he would think it over, as near as I remember.

TRIAL EXAMINER: You mentioned three people. Garrett and Wakulich were on your shift?

THE WITNESS: Yes.

TRIAL EXAMINER: Were the other men on your shift?

THE WITNESS: No, sir.

Q. (By Mr. Wacknov) Did Mr. Garrett receive a wage increase? A. Later on, yes, sir.

Q. How much later on? A. I don't know, maybe two or three weeks, a month.

Q. As much as a month? A. I think so.

Q. How many times did you talk to Mr. Tyler about a wage in-
284 crease for Mr. Garrett? A. That one time is all that I recall.

Q. You stated you went with Mr. Tyler when the wage increases were granted. A. Yes.

Q. How did you happen to be with Mr. Tyler at that time? A. I was in the control room and Mr. Tyler asked if I wanted to go along.

Q. What did you say? A. I said it would be all right with me.

Q. Mr. Tyler took you to these individuals? A. Yes, sir.

Q. Did you say anything to them? A. I congratulated them after he told them they had received a raise.

Q. Did you say anything else? A. No, sir.

Q. You did not ask to go along with Mr. Tyler? A. No, sir.

TRIAL EXAMINER: What did Mr. Tyler say to these men? Did he interview them individually?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Were they at their work stations?

THE WITNESS: Yes.

TRIAL EXAMINER: What did he say to the first one and who was it?

285 THE WITNESS: John Wakulich was first.

TRIAL EXAMINER: What did Mr. Tyler say to him?

THE WITNESS: He had done a fine job and he deserved a raise and he gave him a raise.

TRIAL EXAMINER: Who was the second one?

THE WITNESS: Tom Garrett.

TRIAL EXAMINER: What did Tyler say to Garrett?

THE WITNESS: He told him he had been doing a fine job and he thought he deserved a raise and he also told him that he needed to work on the numbers of the vessels and so forth in the plant.

TRIAL EXAMINER: Did you go with Mr. Tyler to the other employee?

THE WITNESS: No, sir.

* * * * *

Q. (By Mr. Wacknov) Did you have a discussion with Mr. Tyler regarding a pay raise for Mr. Wakulich? A. I told him the same thing I did about Tom Garrett and also Mr. Harris.

286 TRIAL EXAMINER: Excuse me. Did Mr. Tyler come to you and ask you your opinion?

THE WITNESS: No, sir.

TRIAL EXAMINER: You went unsolicited with him--to Mr. Tyler, and what is your answer to that?

THE WITNESS: I don't remember whether I met him in the hall or I went into his office or where it was, where we had the conversation.

Q. (By Mr. Wacknov) Mr. Sims, suppose you were working on a shift on the weekend. Would there be a management person out there? A. No, sir, not normally. Sometimes.

Q. Now, you say sometimes. Under what circumstances? A. Well, if we were having trouble in the plant or were all turned around or something unusual in the way of operations, somebody would come out.

Q. Were there times when Mr. Klein or Mr. Tyler would come out on the weekend even if you weren't having trouble?

A. Oh, yes.

Q. How often would that happen? A. Quite often.

287 Q. What would they come out there for? A. Check and see how the plant was running and normally, they would leave instructions as to what we were to do when they weren't there.

Q. This telephone call you received from Mr. Angle, did he begin it by saying he wanted to commend you on your work or did he begain it some other way? A. I couldn't tell you. I don't know.

Q. And did he congratulate you on the type of work you had been doing on the one problem at the plant when it was shut down?

A. Yes, he did. He said we, as a crew, had done a fine job and that he appreciated it and he was going to give us a letter of commendation, which we never received.

Q. Had you done this on your own or had you received help from Mr. Tyler or any management people on this shutdown to get the plant back in operation? A. We did it on our own, it was routine.

Q. Routine? A. As far as starting up the compressors, the junior operators knew their job and I knew mine on the board. I might add this, many times --

TRIAL EXAMINER (interrupting): Please don't add, we have enough stuff..

Q. (By Mr. Wacknov) With regard to the time cards, Mr. Sims, would your signature be the final signature on those time cards as

288 far as their authenticity? A. No, sir. We put ours on there and took them up to Henry Tyler and he signed them.

Q. Do you know what Mr. Tyler did with them after that?

A. I assume he sent them in to the office.

MR. WACKNOV: No further questions.

TRIAL EXAMINER: Anything, Mr. Kelly?

REDIRECT EXAMINATION

Q. (By Mr. Kelly) As an operator, is there any substantial operative procedures which you are expected to perform which are not already outlined and designated by company manuals or texts? A. No, sir.

Q. You don't make decisions contrary to any of those, do you? A. No.

Q. With respect to the special order book as to certain procedures to be done, do you write in the special order book? A. No, sir.

TRIAL EXAMINER: Any further cross?

I am going to hold you to matters developed in redirect.

MR. MARTIN: I understand.

RECROSS-EXAMINATION

Q. (By Mr. Martin) Mr. Sims, you testified, as I understood, to Mr. Wacknov concerning a key. A. Yes, sir.

289 Q. Did you ever have a key to Buddy Owens's desk? A. No, sir.

Q. Did you ever remove anything from Buddy Owens's desk? A. Yes, sir.

Q. Did you ever unlock Buddy Owens's desk to get it out? A. No, sir.

Q. What did you remove from Buddy Owens's desk? A. I don't really recall what the item was. I remember one time there was something in the desk drawer that was interesting to me at the time.

Q. What was it, do you recall? A. No, I don't.

Q. Did it have something to do with maintenance? A. No, sir.

Q. Did it have something to do with Mr. Bill Sloan or Mr. Johnson? A. I think it did.

Q. What did it have to do with Sloan and Johnson? A. I don't recall exactly. I think it mentioned that the company was going to try to replace them at one time or another.

Q. What did you do with that information? A. Well, I told somebody about it.

Q. Who did you tell? A. I don't really know. I suppose Wakulich and Garrett.

290 Q. Did you tell Mr. Sloan or Johnson? A. I think I did later on.

Q. Did that information have anything at all to do with you? A. I don't think so.

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292 AREL RODGERS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Wacknov) Would you state your name and address, please. A. Arel Rodgers, Otis, Kansas, Box 319.

Q. Mr. Rodgers, were you formerly employed by Kansas Refined Helium Company? A. Yes.

Q. For approximately how long were you employed? A. Fourteen months.

Q. What was your position, your job description with the company? A. Senior operator.

293 Q. Were you hourly paid or -- A. (Interrupting) Yes.

Q. (Continuing) --or salaried? A. Yes, hourly paid.

Q. What was your pay per hour? A. Three seventy-five an hour.

Q. When were you hired, do you recall? A. Sometime in July, I think.

Q. Of 1965? A. Of 1965.

Q. And you were terminated on September 20, 1966? A. Yes.

Q. Now, Mr. Rodgers, where were you previously employed before that? A. National Helium at Liberal, Kansas.

* * * * *

295 Q. (By Mr. Wacknov) Are you involved in a training program being employed by Kansas Refined Helium Company? A. Yes.

Q. What other employees were employed in this training pro-
296 gram? A. All the original group that was hired, probably some 15 or 20 men, I am not sure.

Q. Were they both junior and senior operators? A. Yes.

Q. Did you have a special training program as a senior operator that the junior operators did not have? A. No, sir.

* * * * *

297 TRIAL EXAMINER: When you were being trained, by the way, did you have any experience at National Helium that was applicable to Kansas Refined Helium work?

THE WITNESS: Yes.

TRIAL EXAMINER: Did a number of people come over from National Helium to Kansas?

THE WITNESS: Just two.

TRIAL EXAMINER: But the training program consisted of training how many new employees, do you remember?

THE WITNESS: At Kansas Refined Helium, the training program?

TRIAL EXAMINER: Yes.

THE WITNESS: Fifteen or 20.

TRIAL EXAMINER: Were you trained for a specific job?

THE WITNESS: No.

TRIAL EXAMINER: Were you trained as a class or as individuals?

THE WITNESS: In a class.

TRIAL EXAMINER: Was any distinction made between one man and another in that class?

THE WITNESS: No.

TRIAL EXAMINER: You were all given the same instructions.

Go ahead, Mr. Wacknov.

Q. (By Mr. Wacknov) Now, Mr. Rodgers, did you testify at the National Labor Relations Board hearing on August 9, 1966?

A. Yes.

Q. This conversation with company management regarding your authority, was that before or after the N.L.R. Board hearing?

298 A. One time the day after returning to the plant after the hearing in Wichita, Mr. Tyler called me in and he was greatly concerned and he told me that the job that they had there was supervisory and that the man that held that job would be a supervisor, and he wanted me to understand it very clearly.

Q. Is that the first time he told you that? A. Yes, sir.

Q. Prior to that time, were you told anything about your authority? A. Well, one time in particular, he said--

Q. (Interrupting) Who said? A. Mr. Tyler, Henry Tyler said that it had been discussed whether we should have the authority to discipline.

TRIAL EXAMINER: Discipline whom?

THE WITNESS: Employees.

Q. (By Mr. Wacknov) By "we", you mean the senior operators?

A. Yes.

And he said it had been decided that we were not to have that authority, that if there were any difficulties as far as discipline was concerned we should call him and he would immediately come to the

299 plant as quickly as possible to take care of it.

TRIAL EXAMINER: Can you fix a date for that discussion, was it before the Labor Board hearing?

THE WITNESS: Yes.

TRIAL EXAMINER: Was it after American Messer had handed over the plant?

THE WITNESS: Yes, sir.

* * * * *

Q. Directing your attention to September 13, 1966, do you recall a conversation with Mr. George Angle? A. Yes, I do.

Q. Where did this conversation take place? A. It was in Norman Klein's office.

Q. Do you recall about what time of day it was? A. It seems to me it was somewhere around 9 or 9:30.

Q. In the morning? A. Evening. I was on evenings.

Q. Was anyone else present? A. In the room?

300 Q. In the room. A. No.

Q. Approximately how long did this conversation last? A. Approximately an hour and a half to two hours, something along that line.

Q. How did Mr. Angle begin the conversation? A. He told me that he was going to interview [redacted] as though I had never worked for him before and he would draw his conclusions there, and he asked if I remembered being in his office and which I did. In Wichita I went from National Helium to his office and I did remember that, and he said he didn't remember that because he was a busy man.

Q. Can you relate what you said to him and what he said to you during the course of this conversation, to the best of your ability? A. Well, he showed me some--a letter that he said had come in the O.C.A.W. and asked if I remembered having received a copy of that letter, and I told him no, that I didn't believe I had but I was familiar with the information contained in it, and he said, "You mean to tell me you stuck your neck out at the hearing and they don't even bother to send you a copy of these things?" I said, "That seems to be the case. I know the information contained in the letter but as far as receiving it, I did not." Then he handed me some letters and asked if I knew anything about these letters or had I read them, and it seems like there

301 was only two, and as he handed them to me I just glanced at them and then he took them back.

Q. Would one of these letters be marked Respondent's Exhibit 10-A? A. Well, I think it probably was.

Q. And was another one of the letters what has been marked as Respondent's Exhibit No. 11? A. I believe so.

Q. What did he ask you about the letters? A. I think he asked me if I had seen them and I don't exactly remember other than he said, "What do you think of these letters?" and I said, "Well, I don't know. I think that it is too bad that things like that have to be written."

TRIAL EXAMINER: Next question.

Q. Did he ask you if you wrote it? A. I don't remember him asking me if I wrote those letters.

Q. What else did Mr. Angle say during this conversation? A. He told me that he had spent a lot of time and effort in the building of that business and he would let no one destroy this thing, and a union or no one else would destroy this thing that he spent time and effort building, and that it was a threat to the security of his family and all that he had.

Q. Was there anything mentioned about a union election? A. It seems like there was, and I think he said there would be no election.

* * * * *

302 Q. (By Mr. Wacknov) Mr. Rodgers, did he say anything with regard to discharging employees? A. Yes, he said he was going-- it seems like he did, he said he was going to fire those that, something I don't remember for sure, it seems that he was going to fire those that were for the union. I am not sure of the wording.

Q. Did he say anything about malcontent? A. Yes, it seems like I do remember that.

* * * * *

Q. (By Mr. Wacknov) Did he say, Mr. Rodgers, how many people would remain to vote for a union? A. I think he said there would not be enough left to vote.

Q. Did he say there would not be enough left? A. I think he was going to fire them.

Q. When you say "I think," are you now testifying from the best of your recollection? A. Yes, I am.

Q. Is that what he said? A. Yes.

* * * * *

303 Q. (By Mr. Wacknov) Did you tell him how you were going to vote? A. Yes.

Q. You volunteered that information? A. Yes.

Q. What did you tell him? A. About the conditions at the plant and the needs. He asked me, he said, "You need to check with some of my men and see what they think of me before you decide what you need," and I told Mr. Angle I would make my judgment on what I
304 thought about him, I didn't need to talk to anybody else, I would make my judgment from talking to Mr. Angle and I thought we needed a union.

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Q. (By Mr. Wacknov) Did he mention anything about the senior operators? A. He said they were union agitators.

* * * * *

Q. (By Mr. Wacknov--continuing) --did he say anything else about the senior operators other than they were union agitators? Did he say he would fire them? A. I think he said he was going to fire all the union agitators.

Q. Mr. Rodgers, directing your attention to September 20, 1966, were you discharged on that date? A. Yes.

Q. Under what circumstances? A. Well, it was given, Mr. Angle had us called in, and I was the last to get to the room. He said

305 he didn't like losing good business, he had some letters and a check with that letter and he said, he handed it out after saying he didn't like losing good business and I left feeling there was nothing more I could say or do. I went out his door and he said, "Come back here Rodgers, I am not finished with you." Mr. Angle said, "I want you to get your things and I mean get out of here," and that is what I did.

Q. During the conversation with Mr. Angle, the interview on the 13th of September, did he ever refer to you as a supervisor?

A. No.

Q. Have you ever been referred to as a supervisor at the plant?

A. By Mr. Henry Tyler.

Q. When was this? A. The time he told me I was a supervisor and he wanted me to know it.

Q. Was this after you got back from the N.L.R. Board hearing?

A. After I got back from Wichita, yes.

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311 WILLIAM SLOAN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Wacknov) Would you state your name and address, please. A. William Sloan, 13952 Hillard Lane, Dallas, Texas.

Q. Mr. Sloan, were you formerly employed with the Kansas Refined Helium Company? A. Yes, I was.

Q. Did you leave the employment of the company voluntarily?

A. Yes, I did.

Q. You were not discharged? A. No.

Q. What was your position with the company? A. I was an instrument man.

* * * * *

312 Q. (By Mr. Wacknov) Handing you what has been marked as General Counsel's Exhibit No. 3-F, and would you please look at that,

Mr. Sloan, and identify that exhibit. A. Yes. This is a card petitioning for membership in a union.

Q. Did you sign that card, Mr. Sloan? A. Yes, I did.

Q. And who gave you the card? A. Dwayne Johnson.

Q. Is that card dated on the same date on which you signed it? A. Yes, it is.

Q. What is the date? A. 6/23/66.

MR. WACKNOV: At this time I would like to introduce General Counsel's Exhibit 3-F into evidence.

* * * * *

313 Q. (By Mr. Martin) Did Mr. Patton witness your signature? A. No, sir.

Q. The date 6/23/66, Mr. Sloan, do you recall whether you put the date on there or whether it was put on there by someone else? A. I don't recall, but it is my writing so I am sure I put it on there.

Q. You are sure you put it on there? A. Yes, sir.

MR. MARTIN: No objection, Your Honor.

TRIAL EXAMINER: It is received.

* * * * *

314 CROSS-EXAMINATION

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315 Q. (By Mr. Martin)

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Q. At the time that you received this General Counsel's Exhibit 3-F. Was there any more to that exhibit than what now appears? A. Well, yes, well, I am uncertain. I think there was some more to it but I don't know whether there was or wasn't.

Q. Do you know what happened to what more there was to it if there was something more to it? A. No, sir.

Q. Did you take it off? A. No, sir.

Q. Do you know what it said? A. No.

Q. Do you know that that-- A. (Interrupting) I did read it at the time but I don't know what it said now. It wasn't of a great deal of interest, I guess, so I don't remember.

Q. What were you told was the purpose of having to sign this card? A. To petition the union for an election for representation in the plant.

* * * * *

316 DWAYNE JOHNSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Proceed.

DIRECT EXAMINATION

Q. (By Mr. Wacknov)

* * * * *

317 Q. Mr. Johnson, what was your job description at the Kansas Refined Helium Company? A. To maintain the instrumentation and do some laboratory analyzing.

Q. Were you called an instrument man? A. Yes.

* * * * *

318 Q. Mr. Johnson, did you contact a union? A. Yes, I did.

Q. Do you know the name of the union? A. Yes.

Q. What is that? A. Oil, Chemical and Atomic Workers International Union.

Q. For what purpose did you contact them? A. I had been contacted by some of the other men and had been asked to contact the union. I did. I had been a member of this union previously in St. Paul, Minnesota, and I contacted them for that reason.

* * * * *

319 MR. WACKNOV: I would like to amend paragraph 6C of the amendment to the complaint by striking the word "July 5", and inserting the word "July 28".

* * * * *

320 TRIAL EXAMINER: On a change of date in an area that is already delineated I see no prejudice. If you claim you need some time to meet some particular thing and it is important we will consider a continuance for that purpose, but very frankly I can see very little prejudice to you in a change of date of this nature in this setting. The motion will be granted and you have, with the caveat that is mentioned, if it should become important you call it to my attention and make the appropriate application.

* * * * *

321 Q. (By Mr. Wacknov) Directing your attention to on or about July 28, 1966, do you recall attending a steak dinner for Mr. Angle? A. Yes.

Q. Do you recall when it was held? A. Hiland Manor in Great Bend.

Q. Is that a motel? A. Yes, it is.

Q. And do you recall who was present at this steak dinner? A. Nearly all of the Kansas Refined Helium employees except those people who were on shift at the time, in addition to some of Angle's oil field workers.

Q. Were any members of Mr. Angle's family present? A. Yes, his family was there.

Q. During the course of this dinner which was given for the employees, did Mr. Angle make a speech, or happen to?

* * * * *

322 THE WITNESS: Yes.

TRIAL EXAMINER: Next question.

Q. (By Mr. Wacknov) Would you please relate as best you can what Mr. Angle said during the course of this speech? A. Well, he became kind of upset. He said he had been through two wars and it was tough and he'd get people that crossed him, anybody that crossed him. And he said that he had never seen a more evidently violent tempered S.O.B. that he was and revenge was a passion

with him, and that his relation with his oil field people had always been a matter of root-hog-root and that they had always been that way or he would shut the plant down or sell it or give it to L.B.J. And there was more but I can't recall all of it.

Q. Mr. Johnson, did Mr. Angle give any physical signs of his anger? A. Yes, he shook his fist when he told us how violent he was and about a passion for revenge.

* * * * *

323 Q. (By Mr. Wacknov) Directing your attention to September 15, 1966, did you happen to have an interview, did you have an interview with Mr. Angle? A. Yes.

Q. Do you recall what time this interview took place?

A. Around 4:00 p.m.

Q. In the afternoon? A. Yes.

Q. Who was present? A. Mr. Angle and myself.

Q. Where did this take place? A. In Mr. Angle's office at the plant.

Q. How did Mr. Angle begin this conversation, Mr. Johnson?

A. Well, he said that he was going to tell me the name of the game and that he was going to interview me for a job just as if I didn't work for him and he was aware I had worked for him for quite some time but he was going to interview me as if I didn't work for him and the rules were that anybody that was not a hundred per cent happy with his job and a hundred per cent happy with the way Mr. Angle ran things would be fired and anybody who didn't, couldn't make up his mind or was wishie washie about whether he was a hundred per cent for Mr. Angle or not would also be fired and if there was anybody who couldn't make up his mind whether they were a hundred per cent happy all the time on the job with him would also be fired just to make sure he got

324 them all, and he said that there wouldn't be, when he got through firing people there wouldn't be anybody left to vote for a union.

He said, "How are you going to get a union in here when there is no one left to vote for one?"

Q. Mr. Johnson, did he ask you how you might vote? A. Yes, he did.

Q. What did he say in that regard? A. He asked me how I was going to vote in the union election.

Q. What did you say? A. My reply was that I thought I was entitled to a vote by secret ballot and at that time I would make my decision, and that I wouldn't answer any questions pertaining to the union or union activities or who was going to vote for it or who wasn't.

Q. Did he say, "I might have a justifiable reason to discharge you." A. He said after the union got in if it should get in, but it wasn't, he said he could still fire me. He said it would be easier for him to fire me after the union got in than before because he said he could fire me because he didn't like my brown eyes or he could say I was just doing a lousy job.

* * * *

325 Q. (By Mr. Wacknov) Do you recall anything else that was said during the course of the interview? A. He said that he had spent $5,000 on this union thing and he wasn't through yet and that any time you punch a red tiger with a sharp stick you would get an immediate violent action, and he said he didn't think we knew who we were dealing with when we started this thing, that there was an old Chinese Proverb which was a recipe for a tiger tomb and the first ingredient was first you must kill a tiger, and there is more, obviously, I can't recall all of it.

* * * *

Q. (By Mr. Wacknov) Did he ask you how you thought other people would vote?

* * * *

326 THE WITNESS: Yes, sir, he asked me how many people I thought would vote for the union and I told him I didn't know.

* * * *

Q. (By Mr. Wacknov) Is there anything in the area of senior operators, was there anything mentioned by Mr. Angle? A. Yes, sir, he said that after the N.L.R.B. decision on the election that ruled that these people were supervisors he said there sure was some long faces around and because the instigators were for the big union and now they can't even vote.

* * * *

Q. (By Mr. Wacknov) Directing your attention to September 20, 1966, were you terminated on that date? A. Yes, sir.

Q. And do you recall any conversation with Mr. Angle
327 upon your termination? A. Well, he just called us in and told us that he didn't like long goodbye's, there were our checks and the reasons were outlined in our letter for our discharge and he told us he was going to do it and that was about all.

Q. You had no other conversation after that? A. No.

* * * *

328 DEAN TITTEL

329 was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Wacknov)

* * * *

Q. Mr. Tittel, are you employed by Kansas Refined Helium Company? A. Yes, sir.

Q. For how long have you been employed? A. Since the latter part of April '66.

Q. And what is your title at the company, your position?
A. Maintenance electrician.

* * * *

Q. Mr. Tittel, I hand you what has been marked as Gen-
330 eral Counsel's Exhibit No. 3-K. Would you please identify that exhibit. A. It is my application card for membership in Oil, Chemical and Atomic Workers.

Q. Is that your signature that appears at the bottom?
A. Yes.

Q. Is the date which appears at the top the date which you signed that card? A. Yes, sir.

MR. WACKNOV: At this time I offer General Counsel's Exhibit No. 3-K into evidence.

MR. MARTIN: May I take the witness on voir dire, Your Honor?

TRIAL EXAMINER: Yes.

Q. (By Mr. Martin) Mr. Tittel, referring you to the card here, who witnessed you signing that card? A. Dwayne Johnson.

Q. Anyone else?

TRIAL EXAMINER: Dwayne who?

THE WITNESS: Dwayne Johnson. A. Not that I can recall.

Q. (By Mr. Martin) Where were you when the card was signed? A. In the shop.

Q. On duty? A. Yes, during the noon hour, it was my lunch time.

331 Q. Was Mr. Patton present? A. No, sir.

Q. If you know, who put the date "June 23", on there?
A. I did, it is my writing.

* * * *

TRIAL EXAMINER: Any objection to its receipt?

MR. MARTIN: No, I do not.

TRIAL EXAMINER: It is received, 3-K.

* * * *

CROSS-EXAMINATION

Q. (By Mr. Martin) What were you told was the purpose
332 of the card at the time you signed it? A. For the purpose of maybe petitioning for an election for representation by the union.

Q. Is that the only thing you were told? A. That I can recall.

* * * *

336 MR. MARTIN: Your Honor, we will stipulate that the list of 22 employees which appears on General Counsel's Exhibit 10 is a list of the employees within the bargaining unit designated as appropriate by the Regional Director, including the four senior operators as of the date June 30, 1966, and July 1, 1966.

337 TRIAL EXAMINER: Very well. That will be received.

(The document above referred to, heretofore marked General Counsel's Exhibit No. 10, was received in evidence.)

MR. WACKNOV: Mr. Trial Examiner, it should be further explained on the record that the names of five individuals are lined out on this exhibit and it is stipulated that these five individuals are not to be included.

TRIAL EXAMINER: Yes.

* * * *

MR. WACKNOV: At this time General Counsel's Exhibit No. 2, which has been reserved for the formal papers and other papers in the R case proceeding I would like to offer into evidence General Counsel's Exhibit 2-A, being the formal papers in the representation proceeding 17-RC-5126.

General Counsel's Exhibit No. 2-B, being the decision and direction of election in 17-RC-5126.

General Counsel's Exhibit No. 2-C, being a request for review in 17-RC-5126, filed by the petitioner in that case.

338 General Counsel's Exhibit No. 2-D, being employer's statement in opposition to the union's request for review in this case.

General Counsel's Exhibit No. 2-E, being a telegram from the Board to the effect that the senior operators will be eligible to vote through the challenge ballot procedure.

TRIAL EXAMINER: I am taking these into evidence, but strictly speaking, I am taking official notice of them. You have an opportunity, if you wish, to show that any of those papers is not what it purports to be.

* * * *

MR. MARTIN: No objection, Your Honor.

TRIAL EXAMINER: That is A to E?

MR. WACKNOV: Yes.

TRIAL EXAMINER: They are received.

* * * *

339 MR. WACKNOV: The parties are willing to stipulate that General Counsel's Exhibit 11 consists of two letters which contain numerous pages, the first letter dated July 11, 1966, and the second letter dated July 27, 1966, with attachments and copies of other letters attached thereto, and that these two letters were sent to each of the employees of the company and received by them. However--

TRIAL EXAMINER (interrupting): By whom?

MR. WACKNOV: Sent by the employer. However, the employer respondent in this case would object to the relevancy of these letters.

TRIAL EXAMINER: Let me see them.

Stipulate as to authenticity.

MR. MARTIN: Authenticity and delivery.

TRIAL EXAMINER: Delivery and publication.

* * * *

341 TRIAL EXAMINER: In view of the letter of July 11, 1966, it seems relevant and the objection is overruled. It will be received.

* * * *

342 GEORGE A. ANGLE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Wacknov) Will you state your name and address? A. George A. Angle, 728 Stratford Road, Wichita, Kansas.

Q. Mr. Angle, are you the owner of Kansas Refined Helium
343 Company? A. Yes, sir.

Q. During the summer of 1966, did you give a raise in pay to certain of your employees but not to employees of Kansas Refined Helium Company?

* * * *

A. You use the word "summer", on May 9, 1966, I gave raises to ten or eleven of the K.R.H. employees and on May 23, 1966, I gave raises to four, five, or six K.R.H. employees.

TRIAL EXAMINER: You are asked about employees of other enterprises with which you are connected.

THE WITNESS: Yes, sir.

TRIAL EXAMINER: What about those?

THE WITNESS: In the latter part of July that year I gave employee raises to the employees that work in my, the other trade names of companies I own.

344 TRIAL EXAMINER: Can you designate by what they do if you can't remember the name, driller?

THE WITNESS: Red Tiger Drilling, Red Tiger Trucking, Red Tiger Cat, Great Plains Drilling, Hayes Tank Service.

TRIAL EXAMINER: Did you give raises to all the employees of those enterprises toward the end of July, did you say?

THE WITNESS: Yes, sir.

* * * * *

347 Q. (By Mr. Wacknov) Handing you what has been marked as General Counsel's Exhibit No. 12, is that a list of the employees at Kansas Refined Helium Company, their pay increases and the other information as requested which the subpoena —

TRIAL EXAMINER: Between what dates?

MR. WACKNOV: Between January 1, 1965, to the present date.

A. Yes, it may be more than you asked for. It is a list of every employee that is there now or has ever been at K.R.H., their initial salaries, as of today, and their raises where they are today.

348 TRIAL EXAMINER: The whole profile of their salaries from the time they came in until today?

THE WITNESS: Yes.

* * * * *

349 Q. (By Mr. Wacknov) Mr. Angle, on the date that the six discharged employees were discharged, that was September 20, 1966, did you grant pay increases to the remaining employees?

TRIAL EXAMINER: Does that document show it?

MR. WACKNOV: No.

A. No.

Q. (By Mr. Wacknov) Did you announce wage increases on that date? A. I don't believe so. There was a wage increase on September 26.

Q. September 26, which is — A. (interrupting) It is shown on that.

Q. It is shown on General Counsel's Exhibit 12 as the date on which the wage increases became effective, is that correct? A. Yes, sir.

Q. When were these wage increases announced, Mr. Angle?
A. Some date prior to the 26th.

Q. How much prior to the 26th? A. I am not certain; it would be between the 20th and the 26th. They weren't announced on the 20th, so you have a matter of five days. They were announced verbally; there was no documentation. I don't recall exactly. I left the plant; the plant Personnel announced them.

Q. Do you recall on what date the election was to be held?

350 A. September 28.

Q. These wage increases were granted sometime between September 20 and 26, is that correct? A. Yes, sir.

* * * * *

353 Whereupon,

JOHN WAKULICH

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Will you state your full name.
A. John Wakulich.

Q. Where do you live? A. 1200 North Green, Hoisington, Kansas.

Q. For whom are you employed? A. Kansas Refined Helium.

Q. What is your capacity with Kansas Refined Helium?
A. Senior operator.

Q. When did you receive that designation? A. The latter part of December, after the last start-up.

Q. What was your prior classification? A. Junior operator.

Q. How long did you hold that classification? A. July 16, 1965, until the present, in December.

Q. In July of 1965, were you a junior operator at that time?
A. That is right.

Q. And whose crew were you on?

354 A. Harry Harms'.

Q. And in July of 1965, whose crew were you on? A. Russell Sims'.

Q. Who else was on your crew with you and Mr. Sims?

A. Tom Garrett.

Q. Did you have occasion to attend a steak dinner given by Mr. Angle in late July 1966? A. I did.

Q. Were you there at the time Mr. Angle made any speech?

A. No, I wasn't.

Q. What time did you leave, do you recall? A. Approximately between 9 and 9:30 in the evening.

Q. Where did you go after you left? A. I went back home to get some sleep and report to work at midnight.

Q. Did you report at work at midnight? A. I arrived at work approximately 25 to 12 or quarter to 12.

Q. When you arrived, who was at the plant? A. Well, the crew we were to relieve and Russell Sims were already there.

Q. Who was the crew you were to relieve? A. I can't recall.

Q. Did Mr. Garrett come at or about midnight? A. I believe he did; he showed up.

355 Q. After midnight, did anyone else come out to the plant that evening? A. I recall somebody coming out. I am not positive but I think it was Dwayne Johnson.

Q. Do you recall what Mr. Johnson — to whom Mr. Johnson talked when he got there? A. He talked to all of us and he told us what happened at the dinner after we had left, Mr. Angle's speech.

Q. Did Mr. Johnson stay throughout your shift? A. No.

Q. When did he leave? A. Approximately an hour, an hour and a half later.

Q. Are you saying 1 or 1:30? A. Between 1 and 2.

Q. Did Mr. Sims ask you to take over the control board any time after that during the evening? A. Yes, he did.

Q. Do you recall approximately what time? A. We were into the shift already, approximately two hours; I would say maybe around 2, 2:15.

Q. Where did Mr. Sims go, if you know? A. He went behind the control panel to the door that led to the offices on the north side of the building.

Q. And how long was he gone? A. I would say roughly two hours, on and off.

356 Q. What, if anything, did you hear from the direction in which Mr. Sims had gone when he had gone? A. He went in the direction of the men's toilets and I heard a typewriter ticking away.

Q. Who was there at the plant? A. Russ Sims, Tom Garrett and myself.

Q. Is that all? A. That is all.

Q. Did Mr. Sims at any time request you to go any place with him during the evening? A. Yes, he did.

Q. Approximately what time? A. It is hard to say exactly; between 3:30 and 4 o'clock he asked me to come in Norman Klein's office.

Q. And did you go with him? A. Yes, I did.

Q. What happened in Norman Klein's office? A. He showed me a letter or a typewritten page that was in Mr. Klein's file.

Q. I am going to hand you what has been marked as Respondent's Exhibit 10-A and ask you if you can identify it. A. This is the letter.

Q. Did you and Mr. Sims have any conversation concerning that letter at that time? A. The only thing I can recall is that I said, I told him that was going to cause a lot of trouble.

357 Q. Then, where did you go? A. I went back to the control room.

Q. What did Mr. Sims do? A. He also came back and talked to Tom Garrett and, then, the two of them left.

Q. And went which direction? A. Same direction from which we had come.

Q. Did Mr. Russell Sims ever produce a key to any of the company's desks? Did he show you a key? A. I have seen them use a key.

Q. To what desk? A. Mr. Buddy Owens'.

Q. What did he do? Did he get into Buddy Owens' desk? A. This one instance I saw him open it and take something out.

Q. Do you recall when that was? A. No, I don't.

Q. Do you recall what it was he took out of the desk? A. No, I cannot recall that either.

Q. Do you recall ever seeing anything like what he took out of the desk at a later time?

MR. KELLY: Your Honor, if he can't recall what he took out.

TRIAL EXAMINER: He is trying to straddle it. It is pretty
358 thin ice but I will let him do it.

Q. (By Mr. Marvin Martin) Did you ever see that same thing again? A. I saw a paper that was said to have been taken from Mr. Owens' desk.

TRIAL EXAMINER: Said to be taken.

THE WITNESS: Mr. Sims said, "I took it from Mr. Owens' desk."

Q. (By Mr. Marvin Martin) Do you recall what that was? A. It was a yellow piece of paper, must have been five or six sheets there. It had writing there concerning Bill Stahlman, that he was firing Dwayne Johnson, Bill Sloan and something concerning Tom Garrett.

Q. Do you know what Mr. Sims did with that paper? A. He brought it into the control room. He read it; I read it; Tom Garrett read it, and I believe it was put back. Eventually, a thermofax copy was made of the papers and it was also shown to Dwayne Johnson.

Q. Did you have a discussion at any time with Mr. Sims concerning a vote count, informal vote count that had been taken among the employees? A. Yes.

Q. Do you recall when that was? A. I believe it to be the latter part of August. It was coming close, I believe, to the election time.

Q. What was that conversation?

359 A. They were taking a vote count to see how many were in favor and how many opposed to the union and it was down to a matter of one or two votes for a yes vote for the union.

Q. Was that during the period of Mr. Angle's interviews?

A. Yes, sir.

Q. Were you present at the plant during the period, during some period of September 13 and a few days following that while Mr. Angle was holding interviews among employees? A. Yes, I was.

Q. Whose crew were you on at that time? A. Russ Sims'.

Q. Who else was on your crew? A. Tom Garrett.

Q. Did your crew ever have occasion to be alone there at the building during the daytime when Mr. Angle was taking a break from these interviews? A. Yes, we were.

Q. Did you and Mr. Sims ever have a conversation during one of these breaks while Mr. Angle was gone? A. Yes, we did.

Q. Do you recall what that conversation was? A. Well, the time Mr. Angle left, I believe to go to Otis to eat lunch, we went down the hallway and Mr. Sims showed me some papers that were from Mr. Angle's briefcase.

Q. Who took them out of the briefcase?

360 A. Russell Sims.

Q. Did he hand them to you? A. Yes, he did.

Q. Do you recall how long he looked at the papers in the briefcase? A. I would say on and off for approximately 20 minutes.

Q. Who put them back in the briefcase? A. Mr. Sims.

Q. Did you have a conversation among yourself, Mr. Garrett, Mr. Sims and Norman Klein sometime during the month of July on the 12 to 8 tour? A. I believe it was in July. It was the midnight to 8 shift. He came out and he was talking to us and started out as an informal talk and he wanted to know what gripes we had or what displeased us, and I told him, Russ Sims told him, I don't know if Tom Garrett mentioned anything to him and, then, he asked Russ Sims if he could help him straighten out this mess and Sims told him, "If you make me plant manager, I will get it all straightened out."

Q. Have you ever heard Sims mention before anything about wanting to be plant manager? A. I don't believe prior to that, but after that occasion he mentioned it on and off jokingly. That is the way I took it; I didn't accept it.

Q. But he did mention it?

361 A. Yes, sir.

Q. Did you ever have a conversation with Dwayne Johnson concerning Mr. Johnson being up above the company offices? A. Yes, sir.

Q. What was that conversation and when was it held? A. All I can recall is that Mr. Angle was at the plant at the time and they were using Mr. Owens' office.

Q. Was this before the interviews? A. Yes, sir.

Q. By interviews, I mean the September interviews. A. That is right.

And Mr. Johnson said he couldn't hear anything that was going on because John Stiff in the office right next to him was making so much noise on the telephone he couldn't hear anything.

Q. Did he tell you where he had been? A. In the rafters.

Q. Where? A. Above the office.

Q. Did you have a conversation with Mr. Russell Sims during the course of these interviews in September relative to whether or not he had heard any of the interviews from the latrine? A. Yes, sir.

Q. When did that conversation take place? A. That was on the day I was interviewed, during the morning.

362 Q. Do you recall what day that was? A. The only thing I can recall of that was I think Jim Ham and Bill Pickerill had their interviews prior to that time in the morning.

Q. What was your conversation with Mr. Sims? A. He said that if you go into the latrine you can hear what is going on in that office; you can hear what is happening. It was the section that was partitioned off and has a heating duct running through it and you can hear clear as a bell right through it.

* * * * *

363 CROSS EXAMINATION

366 Q. (By Mr. Wacknov) * * * Mr. Wakulich, did you hear Mr. Sims testify this morning? A. Yes, sir.

Q. And did you hear him say you asked him to get an insurance booklet for you; you couldn't find it? A. Yes, sir; I heard him say that.

Q. Where did you look for that insurance booklet? A. It is not an insurance booklet I looked for.

Q. What did you look for? A. Insurance forms.

Q. Where did you look for them? A. Two filing cabinets, upper left-hand side.

Q. Did you look anywhere else? A. That is all. I found them right there.

Q. You found them, you say? A. That's right.

Q. What did you do with them after you found them? A. Removed them.

Q. Didn't you ask Mr. Sims to look for them for you?

367 A. No.

* * * * *

Q. Have there ever been any directions to you, Mr. Wakulich, from Mr. Klein, Mr. Stiff, Mr. Tyler, not to go into those offices?
A. Are you referring to all of them?

Q. Yes, right now. A. No, sir. I never heard anybody ever say not to go into them.

Q. And you have seen people in and out of them? A. Yes, sir.

Q. Have you ever seen people taking things out of them?
A. Yes.

Q. As a matter of fact, these offices were pretty openly and freely used by the employees, weren't they? A. All were with one exception.

Q. What is that? A. Mr. Owens' office, at one time he did lock the door.

368 Q. What — A. For a period the door was locked.

Q. What period? A. On and off for a period of about three weeks to a month it was open and closed, and then it was open again.

TRIAL EXAMINER: When did that three-week period occur?

THE WITNESS: It is hard to say.

TRIAL EXAMINER: Early in '66, midd of '66, late in '66?

THE WITNESS: Approximately the first three months of 1966, '66, when he arrived, within that period.

Q. (By Mr. Wacknov) All right. I hand you what has been marked as Respondent's Exhibit 10-A. Did you state that that was the letter that Mr. Sims showed you? A. Yes.

Q. Where did he get the letter from? A. Bottom drawer of Mr. Klein's desk.

Q. Bottom drawer.

TRIAL EXAMINER: Did you see him take it out of it?

THE WITNESS: Yes, sir.

Q. (By Mr. Wacknov) You saw him take it out of the bottom drawer? A. Yes, sir.

Q. What did he say to you when he took it out? A. He said, "Read this; look what I found."

Q. Did you see Mr. Sims type it?

369 A. No, sir.

Q. Do you know whether or not Mr. Sims typed it? A. No, sir.

Q. In your interview with Mr. Angle, did he have one? A. There was one on his desk.

Q. Did Mr. Angle show you that letter in your interview with him? A. He showed me that, yes.

Q. Did he ask you if you had seen it before? A. No, sir.

Q. Did you tell him you had seen it before? A. No, he did not ask me. He asked me if I knew who had written the letter.

Q. Did you tell him? A. No, sir, because I was not positive.

TRIAL EXAMINER: What was your answer to Mr. Angle? Was it Mr. Angle?

THE WITNESS: Yes.

TRIAL EXAMINER: What was your answer to Mr. Angle?

THE WITNESS: He asked me if I knew who had written the letter and I said no, I did not know who had written it.

Q. (By Mr. Wacknov) When was the first time you reported any of these incidents with regard to Dwayne Johnson and Mr. Sims, with regard to their being in the back office. When was the first time you reported this to the company?

370 TRIAL EXAMINER: We don't know if he did.

Did you ever report it?

THE WITNESS: No.

Q. (By Mr. Wacknov) You never told the company about it? A. No, sir.

Q. They apparently know about it. A. Yes.

Q. How do they know about it? A. January 15.

MR. KELLY: What year?

THE WITNESS: 1967.

A. (Continuing) I was asked by Mr. Martin to come down to Wichita.

Q. (By Mr. Wacknov) On January 15, 1967? A. Yes, sir.

Q. And was that the first time you had talked to Mr. Martin about this? A. Yes, sir.

Q. Did anyone else — was anyone else asked to come down to Wichita to see Mr. Martin? A. Not that I know of.

Q. You were the only one? A. Yes, sir.

Q. Did Mr. Martin, had you told anybody from the company that you had noticed Mr. Sims and Mr. Johnson in this type of behavior be-

371 fore? A. No, sir.

Q. And you were the only one called to Wichita? A. Yes, sir.

Q. Mr. Wakulich, do you know what Mr. Angle's personal briefcase looks like? A. Not off hand.

Q. And you say that Mr. Sims took a paper out of Mr. Angle's briefcase? A. That's right.

Q. How did you know it was his briefcase? A. Mr. Angle had been using it; I assumed it was his. He had been using the office and there were papers that looked like his pads in this one briefcase.

Q. You are assuming now? You don't know? A. That's right, sir.

Q. That is right? You do not know? A. That is right.

Q. With regard to Dwayne Johnson, he said he was in the rafters up above the office? A. That is right.

Q. What is up there? A. There is a space between the roof and the ceiling.

Q. What is that space used for? A. I have no idea.

372 Q. As a matter of fact, don't the maintenance people work up there sometimes? A. Just in the half of the building that is toward the south end.

Q. What do they do up there? A. There are lines running through it, electrical cable.

* * * * *

Q. (By Mr. Wacknov) Mr. Wakulich, in your interview on September 15, did Mr. Angle ask you how you were going to vote?
A. Yes, sir.

* * * * *

373 Q. (By Mr. Wacknov) How long did your interview with Mr. Angle last? A. It was right after Mr. Sims had his interview, approximately a quarter to 2 or 2 o'clock until quarter to 4 or 4 o'clock, approximately two hours in length.

Q. Was anybody in there with you? A. Except Mr. Angle, no.

Q. And how did Mr. Angle start this interview? A. I walked in and he shook my hand, and I cannot recall exactly all the details, just portions of this two-hour interview.

Q. When he asked how you were going to vote, what did you say? A. I told him I would not vote for the union.

Q. When he asked you if you had signed a union card, what did you say? A. I said I had.

Q. I hand you what has been identified as 3-G. Will you identify this.

* * * * *

A. This is my signature on this card.

* * * * *

374 Q. (By Mr. Wacknov) Mr. Wakulich, did you read that card before you signed it? A. Yes.

Q. Who gave it to you? A. Russ Sims.

Q. Was the card dated? A. Yes.

Q. And the date was 6/23/66? Is that the date you signed the card? A. No, sir, that is not my date.

Q. That is not the date when the card was signed? A. That is not my date.

TRIAL EXAMINER: The question is or should have been, do you know what the date was when you signed that card?

THE WITNESS: No, I don't.

TRIAL EXAMINER: Next question.

Q. (By Mr. Wacknov) Who wrote the date on the card? A. I don't know. That is not my writing.

375 Q. What did you fill in on the card? A. My name and address and signature.

Q. Do you recall when you signed this card?

MR. MARVIN MARTIN: It has been asked and answered. I object.

TRIAL EXAMINER: Overruled.

Can you answer the question? Do you know when it was?

A. I would say within four days after Sims gave it to me, but I can't remember the date.

Q. (By Mr. Wacknov) Were there other people around that Russ Sims gave cards to? A. That night when I received mine?

Q. Yes. A. Tom Garrett and myself were the only two that got one from him that evening.

* * * * *

377 TRIAL EXAMINER: The objection is overruled. The card is received.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 3-G, was received in evidence.)

Q. (By Mr. Wacknov) Mr. Wakulich, during the course of your interview with Mr. Angle, did he say he was going to get rid of the malcontents? A. Yes, sir.

Q. Did he say he was going to get rid of everybody that was dissatisfied with the way the plant was run? A. He said he would get rid of the people that was dissatisfied and the malcontents.

* * * * *

382 CROSS EXAMINATION

Q. (By Mr. Kelly) Mr. Wakulich, if I understood what you said in the beginning, you were upgraded to senior operator effective December of '66, is that correct? A. That is correct.

Q. When did you actually assume those responsibilities?
A. On the last time the plant started, approximately, maybe the latter part of December, maybe last week.

Q. Who replaced Mr. Sims, then, in September of '66? A. Actually, there were two men that were made senior operators.

Q. Who were the others? A. Bill Pickerill and Merrell Smith.

* * * * *

Q. Now, in connection with your wage increase in September of '66, Mr. Wakulich, you received this, you think, as you said, Septem-
383 ber 26, is that correct? A. That is right, sir. I believe it was the last pay period starting in September.

Q. Whatever the records show, if it was September 26, that is what it was? A. That is correct.

Q. That was an increase in the area of the junior operator?
A. That's right.

Q. In that connection, in the routine of the company, do you normally get word in advance when you are going to get an increase?
A. Yes, sir.

Q. When were you advised by the company or any of its representatives of this pay raise that took place in September? A. Which one?

Q. September of '66. A. It was the day after all the men were discharged. I left work at 3 o'clock in the afternoon, and when I came in the next day I found out that I had received a pay increase.

* * * * *

Q. (By Mr. Kelly) Lastly, you went to your own interview with Mr. Angle, sir, and you said a minute ago to Mr. Wacknov that Mr. Angle said to you, in words of substance, "I want to get rid of the malcontents," is that his words or yours? A. His words.

* * * * *

395 Whereupon,

JIMMIE HAM

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) State your name, please.

A. Jimmie Ham.

Q. What is your address, please? A. Bison, Kansas.

Q. By whom are you employed, Mr. Ham? A. Pardon?

Q. By whom are you employed? A. Kansas Refined Helium Company.

Q. What is your classification there? A. Senior operator.

Q. Were you at one time classified as a junior operator?

A. Yes.

Q. Who did you work with or for at that time? A. Russ Sims.

Q. You were in his crew? A. Yes.

* * * * *

397 Q. (By Mr. Marvin Martin) During this period that you worked with Mr. Sims, did you ever have an occasion in which you did not carry out any particular function that you as a junior operator were supposed to carry out? A. Yes.

* * * * *

TRIAL EXAMINER (interrupting): * * * Tell us.

A. This particular time it was an incident where we have to sample all the water systems there, and we, well, I would be doing the job and got in a little argument with my fellow employees.

TRIAL EXAMINER: With whom did you get into an argument?

THE WITNESS: Well, Durbin and Stahlman. I told them I wasn't going to do it any more and nobody did it.

Q. (By Mr. Marvin Martin) Three junior operators —

TRIAL EXAMINER (interrupting): You were arguing with Durbin and Stahlman who would do a particular job and nobody did it?

THE WITNESS: Nobody did it so I think it was the next day that
398 Sims put a heavy hand on it.

MR. WACKNOV: I object.

TRIAL EXAMINER: That doesn't tell us anything. Just tell us what happened, not what —

THE WITNESS (interrupting): I took us in the office and made it clear that we were in an orderly fashion and to do this job, one of us one day and one of us the next.

TRIAL EXAMINER: You knew you had to do that?

THE WITNESS: I knew somebody had to do it.

TRIAL EXAMINER: One junior operator had to?

THE WITNESS: Yes.

MR. MARVIN MARTIN: I will ask the reporter if she will mark this as Respondent's Exhibit No. 16.

(The document above-referred to was marked Respondent's Exhibit No. 16 for identification.)

Q. (By Mr. Marvin Martin) Let me hand you what has been marked as Respondent's Exhibit 16 and ask you if you can identify that. A. Yes.

Q. Can you tell us what that is? A. That is the notice that was posted on the bulletin board and one had been given to me that I had been promoted to senior operator and would have a shift of my own.

* * * * *

399 Q. (By Mr. Marvin Martin) Mr. Ham, did you sign a card of any kind relative to a union? A. Yes, I did.

Q. What were you told was the purpose of that card? A. I was under the impression it would give me a right to vote.

MR. WACKNOV: Objection.

TRIAL EXAMINER: That isn't an answer to the question. What were you told and by whom?

THE WITNESS: I was told the card would give me a right to vote in the union election.

TRIAL EXAMINER: Who told you that?

THE WITNESS: Russell Sims.

* * * * *

401 CROSS EXAMINATION

Q. (By Mr. Wacknov) Mr. Ham, at the time you signed your union card, who was this given to you by? A. Russell Sims.

Q. And what did he say about this card? A. He said that that would give me a right to vote in a union election, were there to be one.

Q. What were you talking about immediately before he said that? A. Immediately before he said that?

Q. Yes. A. I think we were discussing guns or some such thing.

* * * * *

409 CROSS EXAMINATION

* * * * *

411 Q. (By Mr. Kelly) What would you do, if anything, with your junior operators as would relate to their wage increases? A. I can't say that I have done anything.

* * * * *

417 Whereupon,

THOMAS B. LYNCH

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

* * * * *

419 CROSS EXAMINATION

Q. (By Mr. Wacknov) Mr. Lynch, do you recall approximately how long Mr. Patton — did he come to your home? A. Yes.

Q. Do you recall approximately how long he was there?

A. It would be an estimate of around 30 to 40 minutes.

Q. You met him before that time? A. No, sir.

Q. What did you talk about? A. We talked about the generality of the plant, of management, how it was managed, the safety aspect of the plant and the operation.

* * * * *

423 Q. (By Mr. Wacknov) Has your recollection been refreshed in regard to what Mr. Patton told you about the card? A. It was union representation.

Q. And did you sign the card after he said it was for union representation? A. Yes.

* * * * *

CROSS EXAMINATION

Q. (By Mr. Kelly) O.K. So, I will understand, at least, Mr. Lynch, did you sign the card so the union would represent you or could? A. Yes.

424 Q. There was no misunderstanding between you and Mr. Patton as to why he came to your home? A. My understanding was we were going to have an election for the union.

Q. And the only way to get an election for the union was to sign a card? A. That is right.

Q. And being a member of a union was nothing new to you?

A. No.

Q. You have been a member of a union before? A. Yes.

Q. How long have you been a member of a union? A. Nine years at Westinghouse and my employment at Martin Company, which was approximately three years.

* * * * *

REDIRECT EXAMINATION

425 Q. (By Mr. Martin) * * * Did you and Mr. Patton at the start discussing a union election? A. It is my understanding or knowledge that we were going to have a union election.

Q. Did you and Mr. Patton discuss that? A. No.

Q. Why did you say it was your understanding or knowledge that you were to have one? A. That is my previous experience of union representation.

* * * * *

427 Conference Room
Federal Office Building
Great Bend, Kansas
Friday, January 20, 1967.

* * * * *

429 Whereupon,

GERALD L. JULIAN

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Would you state your name, please. A. Gerald L. Julian, Rural Route, Albert.

Q. Where are you employed? A. Kansas Refined Helium, Otis, Kansas.

Q. I am going to hand you a card that has been marked as General Counsel's Exhibit No. 3-L and ask if you signed that. A. Yes, sir.

Q. Do you recall what information that appears on that card was placed there by yourself? A. As I recall, it was my signature. And I believe this (indicating) is in my writing, I believe.

TRIAL EXAMINER: What are you indicating as your writing?

THE WITNESS: The signature and the Rural Route, Albert, Kansas. That is all I put on there.

430 Q. (By Mr. Marvin Martin) There might be two signatures. Are you saying both of the signatures are yours? A. I am not positive, no.

TRIAL EXAMINER: Let me see that.

Proceed.

Q. (By Mr. Marvin Martin) Who gave the card to you, Mr. Julian? A. Russell Sims.

Q. Where were you when he gave it to you? A. I am not positive. It was either at the plant or at my house on the farm.

Q. Where were you when you signed the card? A. I was across the street loading up some sheep to take to Wichita when he came out that morning.

Q. Hav you previously been given the card the day before you signed this card? A. I am not certain. As I say, I am not certain whether he gave it to me at the plant or that morning. I signed it; whether he brought it with him, I am not certain.

Q. What were you told when he asked you to sign the card? A. He asked me to sign the card and said this is an inquiry as pertaining to the union.

TRIAL EXAMINER: What?

THE WITNESS: It was a card inquiring as to getting the union.

TRIAL EXAMINER: Next question.

431 Q. (By Mr. Marvin Martin) What did you ask or tell him, if anything? A. Well, I made a comment at the time before I signed it. I asked him why did I have to sign the card if it was an inquiry, and he said this is to show that we are interested in finding out what they had to offer. He said it wasn't to join the union but it was merely an inquiry.

* * * * *

432 CROSS EXAMINATION

Q. (By Mr. DeProspero) Did you read your card before you signed it? A. No, sir.

* * * * *

435 Whereupon,

W. L. ROBERTS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Will you state your name, please. A. W. L. Roberts.

Q. Where do you live, Mr. Roberts? A. Box 223, Otis, Kansas.

436 Q. With whom are you employed? A. Kansas Refined Helium Company.

Q. I am going to hand you a card that is marked General Counsel's Exhibit No. 3-N and ask you if you signed that. A. Yes, sir.

Q. Will you look at what else appears on the card and tell me whether or not the other printed or written information in pen was placed on there by you? A. My name and box number.

Q. The comment, Otis, Kansas, was not placed on there by you? A. No, sir. I don't believe it was.

Q. Who gave you this card to sign, Mr. Roberts? A. Mr. Sims.

Q. Do you recall where you were? A. In the maintenance shop at the plant.

Q. And do you recall what he said to you when he asked you to sign the card? A. Yes, sir. He said hurry and sign it; we would like to get them in today.

Q. Is that all he said to you? A. That is all I remember.

Q. Had you previously been given a card by someone else? A. Yes.

Q. Who? A. Mr. Lynch.

437 Q. What kind of a conversation did Mr. Lynch have with you when he gave you a card?

MR. WACKNOV: Objection.

TRIAL EXAMINER: What is the relevancy?

MR. MARVIN MARTIN: What he said as to the purpose of the card, I think is important.

TRIAL EXAMINER: Mr. Lynch is just another employee..

MR. MARVIN MARTIN: So is Sims.

TRIAL EXAMINER: What Sims said was relevant. What Lynch said is not relevant.

MR. MARVIN MARTIN: If the witness were allowed to testify, at the time Mr. Lynch gave him the card Mr. Lynch told him the card was simply for the purpose of bringing the union in to talk to the employees and explain the union's position. There was no obligation by signing the card.

* * * * *

CROSS EXAMINATION

438 Q. (By Mr. Wacknov) * * * Did you read the card?

A. Yes, I read it.

Q. Did you read the complete card? A. Yes, sir.

Q. Mr. Roberts, there is a date on the top of the card, 6/27/66. Now, would you look at that and tell me if that is not your handwriting?

A. I don't believe that is my handwriting.

439 TRIAL EXAMINER: Let me see it.

Q. (By Mr. Wacknov) Mr. Roberts, is that the date on which you signed the card? A. The best I can remember it is.

* * * * *

Whereupon,

JACK E. DURBIN

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Would you state your full name, please. A. Jack E. Durbin.

Q. And your address. A. Box 281, Otis, Kansas.

Q. I am going to hand you what has been marked as General Counsel's Exhibit 3-0 and ask if you signed that? A. Yes.

Q. Would you look at the rest of the information contained on
440 the Exhibit and tell me if you filled it out, also, the writing in pen? A. Yes, sir, I believe I did.

Q. Who gave you this card? A. Russell Sims gave me the card. He didn't hand it to me. He laid it on the bench.

Q. What did Mr. Sims tell you at the time that he asked you to sign the card? A. He didn't ask me to sign the card. He just laid it down. I was busy.

Q. You were working? A. Yes, sir.

Q. How long did you have this card? A. Oh, maybe two days.

Q. At the end of two days, did you see Mr. Sims again?
A. Yes, sir.

Q. And what did Mr. Sims tell you at that time? A. That he needed the card signed.

* * * * *

441 Q. (By Mr. Marvin Martin) What did Mr. Sims say to you?
A. He asked me to sign the card. He had to get them in.

Q. Did you read the fine print at the bottom of this card?
A. No, sir. I only read where the signature was needed and signed the card and handed it to Mr. Sims.

* * * * *

MR. MARVIN MARTIN: We would like to make an offer of proof that if the witness were allowed to testify, he would testify that it was
442 common knowledge among the employees at the plant there was discussion among them that the purpose of the cards submitted by Mr. Sims was for the purpose of bringing a union agent in to tell the employees what a union could do for the employees.

* * * * *

CROSS EXAMINATION

Q. (By Mr. Kelly) Mr. Durbin, when Mr. Sims gave you this card, as I understood, you kept it a couple of days? A. Yes, sir.

Q. What did he do, just leave it on the bench and not say anything to you? A. He said this is a union card.

Q. You knew it? A. Yes, I knew before he gave it to me.

Q. You had been in the union? A. Maybe eight, ten years.

* * * * *

443 MR. MARVIN MARTIN: I would like to make an offer of proof that if this witness were allowed to testify, he would testify that the past experience in the union it had been his knowledge or understanding that if he, if a union attempted to come into the plant the first thing that happened there was an election before anything, any obligation was made.

* * * * *

Whereupon,

WILLIAM F. PICKERILL

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Mr. Pickerill, would you give us your full name, please. A. William F. Pickerill.

444 Q. Where do you live, Mr. Pickerill? A. 1316 Garfield.

Q. What town? A. Great Bend.

Q. By whom are you employed? A. Kansas Refined Helium Company.

Q. I want to hand you what has been marked as General Counsel's Exhibit 3-Q and ask you if you signed that card? A. Yes, sir.

Q. Would you look at the rest of the information that appears on the card in pen and tell me what of that information was placed on that card by you? A. This looks like or was dated 7/2/66, looks like my handwriting.

Q. Anything else? A. The name being printed here is my handwriting.

Q. What about the — A. (Interrupting) The signature, this 5601 Broadway, isn't, and Great Bend.

TRIAL EXAMINER: Your address and city, Great Bend, are not in your handwriting?

THE WITNESS: Right.

Q. (By Mr. Marvin Martin) Who gave you this card to sign?

445 A. Mr. Russell Sims.

Q. Do you recall where you were at the time? A. I was at the plant.

Q. And do you recall where at the plant you and Mr. Sims were when this was signed? A. Up in the front office, same building that the control room is.

Q. What was your conversation with Mr. Sims at the time he asked you to sign the card? What was said? A. It was merely he told us that we didn't have to join the union; it wasn't anything like this. If we signed these cards, what it amounts to we would get a man out here to talk to us and we can weigh both sides if we like it or if we don't.

* * * * *

CROSS EXAMINATION

Q. (By Mr. Wacknov) Mr. Pickerill, did he say he would have a man out there to talk to the company? A. I don't think he said the company. I do think he said there would be a man out to talk to us. I think he was referring to the employees who signed the cards.

Q. Did you read the card before you signed it, Mr. Pickerill? A. No, I didn't.

* * * * *

447 Whereupon,

NORMAN E. KLEIN

448 was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) * * * What is your position with the company? A. Comptroller over all of Mr. Angle's enterprises and general manager of Kansas Refined Helium Company.

* * * * *

450 CROSS EXAMINATION

451 Q. (By Mr. Wacknov) * * * Mr. Klein, wasn't that your purpose in going to Otis, Kansas, on about the 31st, in order to find out why the

452 employees were dissatisfied and what could be done about the problem? A. I wouldn't say that was my main purpose. I was doing this continually.

Q. Was it one of your purposes? A. Oh, I would say it probably was.

Q. Were you sent out there? A. I was general manager of the plant; this was my job.

Q. As general manager, you don't stay out there? A. No, sir, I don't stay out there.

* * * * *

457 Whereupon,

RONALD WEINMAN

was called as a witness by and on behalf of the Respondent and, having

458 been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Would you give us your full name, please. A. Ronald Weinman.

Q. Where do you live, Mr. Weinman? A. 211 East Fourth, Hoisington.

Q. You are employed by Kansas Refined Helium Company? A. Yes.

Q. Let me hand you a card that is marked General Counsel's Exhibit 3-P and ask you if you signed that card? A. Yes.

Q. Did you fill out the other information that appears in ink?
A. I filled out everything except that (indicating).

Q. What are those initials there?

TRIAL EXAMINER: Describe it.

THE WITNESS: G.C. 3-P.

TRIAL EXAMINER: That is the exhibit number.

THE WITNESS: Yes.

Q. (By Mr. Marvin Martin) Who gave you this card to sign, Mr. Weinman? A. Russell Sims.

Q. Do you recall where you were when he gave it to you?
A. In the front office, which was Mr. Tyler's office at the time.

459 Q. And do you recall what he said to you when he gave you the card to sign? A. He gave me the card and told me that the card, by signing the card, it didn't obligate me in any way as far as the union was concerned and that it was just a recognition of the union.

Q. What do you understand by recognition?

MR. WACKNOV: Objection.

TRIAL EXAMINER: Sustained.

MR. MARVIN MARTIN: If Your Honor please, I want to make another offer of proof that if this witness were allowed to give his understanding of the word "recognition" of a union, that this meant the employees would recognize that there was both a union and company and that the employees would have the opportunity to make a choice between that which was to be offered by the union and that which was to be offered by the company, and it did not bind them to union representation.

* * * * *

TRIAL EXAMINER: Can you read, Mr. Weinman?

THE WITNESS: Yes.

CROSS EXAMINATION

Q. (By Mr. Wacknov) Did you read the card before you signed it? A. I presume I did.

* * * * *

462 Whereupon,

HENRY TYLER

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Will you give your full name, please. A. Henry Tyler.

Q. And your address. A. 1318 McArthur Road, Great Bend, Kansas.

Q. What is your occupation? A. I am an engineer by profession, currently on the management end of the plant operation.

463 Q. What degree do you have? A. I have a B.S. in chemical engineering.

Q. And from what university? A. Colorado State University at Fort Collins, Colorado.

Q. Since graduating from college, Colorado State University, what specialty, if any, have you engaged in? A. I worked primarily in the cryogenic end of it.

TRIAL EXAMINER: Please tell us what cryogenic deals with.

THE WITNESS: Cryogenic is the art of creating and maintaining low temperatures.

Q. (By Mr. Marvin Martin) How long have you been in the Kansas Refined Helium Company? A. Since July 1965.

Q. What capacities have you held there? A. I was plant engineer when I first came and I am currently operations and engineering manager.

Q. Will you briefly describe what the Kansas Refined Helium Company does? A. We take natural gas, which has two percent helium in it, we extract this helium, we purify it, and then liquefy it. It becomes liquid helium at 153 degrees F. and, therefore, cryogenic. We, also, in the extraction process, feed gas. Natural gas is continuously cooled and as it gets colder and colder, various substances in

the gas gets liquid and then you separate the liquid from the vapor and continue to cool this vapor until you have essentially helium left. We

464 then take this and purify it through a wash column and then we put it through charcoal absorbers to complete the purification, and then we liquefy it.

TRIAL EXAMINER: This is sort of an upside down dissolution process?

THE WITNESS: Yes; you just condense it out.

TRIAL EXAMINER: What happens to the natural gas after you finish with it?

THE WITNESS: After we liquefy it, we take it out, take the refrigeration out of it; we compress it back up and put it in a pipeline and sell it, also.

TRIAL EXAMINER: All the natural gas that comes into the plant is yours; in effect, you are not just a station on the pipeline?

THE WITNESS: No.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Marvin Martin) Can you briefly describe in lay terms, as best you can, the equipment and facilities there at the plant?

A. We have several general areas which is the control room.

MR. WACKNOV: I object to the relevancy of this.

TRIAL EXAMINER: This is a description of the plant. It might be quite important. I hope the witness will keep it rather general and I hope counsel will keep it rather brief.

465 MR. MARVIN MARTIN: I intend to do so.

A. We have several areas that processes is broken down into the compression area, which is a huge house which houses large engines with compressors on them. There is a total of about 6,000 horsepower in these engines. Heat exchangers, after coolers and things of this nature, also in this house, which is outside —

Q. (By Mr. Marvin Martin — interrupting) Approximately what is the size of that building? A. I would say a hundred feet wide and probably three hundred feet long.

TRIAL EXAMINER: That is an out building as far as the building we have been talking about all along?

THE WITNESS: Yes; it is separate from the control room.

Q. (By Mr. Marvin Martin) How tall? A. With the overhead clearance it is probably three stories high.

The other general area is a pretreatment for the incoming feed gas, which removes the acid gas and the natural gas as it comes from the wells. Then, there is a cold box area. A cold box is in this low-temperature processing. You have heat exchangers and vessel piping; anything that might be cold you arrange within a big box, a big house and, then, you pour insulation over all of this. You can't see the vessels and these are called cold boxes.

466 Q. Can you give the size of those cold boxes? A. The extraction cold box is, I would guess, 50 by 60 feet by perhaps four stories high with some tiers that it comes up to the fourth story.

Q. Go ahead. A. In addition to that is the liquefier, a cold box for liquefiers. It is so cold it has been insulated by a vacuum jacket, like a big thermos bottle.

Q. How big is it? A. The entire structure which contains it is approximately twenty by twenty, a total height of four stories, again.

Q. What else is there? A. So, that comprises — there is what we call a pipe rack area between the compressor room and cold box in which is some refrigerant storage tanks, liquid ethylene, liquid propane. There is gas and helium storage areas, both high pressure and low pressure.

* * * * *

467 Q. (By Mr. Marvin Martin) Will you tell us briefly what the make-up of your plant is in terms of personnel by classification? Start at the top, if you will, and work down, just to give us an organization chart.

TRIAL EXAMINER: Draw up an oral organization chart.

THE WITNESS: Currently?

Q. (By Mr. Marvin Martin) If you will take it at the time involved here, do it.

TRIAL EXAMINER: June through September 1966?

MR. MARVIN MARTIN: Right.

A. There was a plant manager, Mr. Owens. Under Mr. Owens was
468 myself in charge of operations as plant manager, and Mr. John Stiff in charge of maintenance. Mr. Stiff had a crew of, I am not sure of the number of people that he worked directly with in maintenance. Under me in operations were the instrument people, a side group.

TRIAL EXAMINER: What do you mean by instrument people? Read them or name them.

Q. (By Mr. Marvin Martin) As far as skill, where did they fit?

A. As highly skilled as we had.

* * * * *

469 Q. (By Mr. Marvin Martin) How many of the operating crew did you have consisting of senior operators and junior operators?

A. Four crews rotating on the swing shift.

TRIAL EXAMINER: What does swing shift mean? Does it mean a midnight to 8, A crew, 8 to 4, B crew and 4 to 12, crew C, or did the crew maintain the same shift for a while and then use the swing shift to move over to another shift?

THE WITNESS: To move over to another shift. There were four crews; one crew was always off on a long weekend.

TRIAL EXAMINER: How long was the long weekend?

THE WITNESS: On a long weekend, the people would get off on Friday at midnight and not be due back until the following Wednesday at 4 in the afternoon.

TRIAL EXAMINER: For about four or five days each crew maintained the same shift and then it moved?

THE WITNESS: Every week they would change shifts.

Q. (By Mr. Marvin Martin) How much time did you usually spend in the plant? A. Back during the area of start-up, quite a number of hours. After we had many problems in engineering that didn't work. We had a fire, we had some leaks, but —

TRIAL EXAMINER (interrupting): What period are you talking about?

THE WITNESS: That was September or, really, from July.

470 TRIAL EXAMINER: July, what year?

THE WITNESS: Of '65, sir.

TRIAL EXAMINER: This was when American Messer was still operating?

THE WITNESS: Yes.

TRIAL EXAMINER: Did you come in with them?

THE WITNESS: I was hired by them.

TRIAL EXAMINER: So that the record so far shows there was some kind of transition period from July of '65 to January '66, when American Messer completely turned over to Mr. Angle's company, is that correct?

THE WITNESS: I would say it was by January. They hadn't reached an agreement by January 1. The pay checks came from Mr. Angle's office for all the people.

TRIAL EXAMINER: From when?

THE WITNESS: From the first pay check the people received.

TRIAL EXAMINER: When was that?

THE WITNESS: July of '65.

TRIAL EXAMINER: I am not sure I have to know too much about that area, fortunately.

THE WITNESS: May I continue?

Q. (By Mr. Marvin Martin) My question, let's use the period, say, from June, July, August 1966, how much time were you spending at the plant? A. Maybe eight, nine hours, ten hours a day, from 8 to 4 or 5.

471 TRIAL EXAMINER: Every day?

THE WITNESS: Except Saturdays and Sundays. There are times when you have to go and get stuff done.

TRIAL EXAMINER: This was your job?

THE WITNESS: Yes.

Q. (By Mr. Marvin Martin) Did you have any assistant who helped you on Saturdays and Sundays or at nights? A. No.

Q. Do you, in the course of your employment, have control of certain records concerning memorandums, notices, and so forth, that have from time to time been given to personnel at the plant? A. Yes.

MR. MARVIN MARTIN: I will ask you if you will mark that as Respondent's Exhibit No. 18.

(The document above-referred to was marked Respondent's Exhibit No. 18 for identification.)

Q. (By Mr. Marvin Martin) I hand you what has been marked as Respondent's Exhibit No. 18. Do not describe the contents. Tell us what the instrument is. A. It is a company notice to the personnel.

MR. MARVIN MARTIN: We would offer Respondent's Exhibit 18, Your Honor.

MR. WACKNOV: No objection —

472 TRIAL EXAMINER (interrupting): Let me see it, please.

MR. WACKNOV (continuing): — to the identity of that.

TRIAL EXAMINER: Where was this posted?

THE WITNESS: On the control room bulletin board, and I have a copy of that.

TRIAL EXAMINER: When was it posted?

THE WITNESS: I don't recall.

TRIAL EXAMINER: Looking at it, does it tell you anything?

THE WITNESS: The date on it is February 5.

TRIAL EXAMINER: Does that seem correct to you?

THE WITNESS: Yes.

TRIAL EXAMINER: It is received.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 18, was received in evidence.)

(The document above-referred to was marked Respondent's Exhibit No. 19 for identification.)

Q. (By Mr. Marvin Martin) I hand you what has been marked as Respondent's Exhibit 19 and ask you if you can identify that.

A. It is a notice to all the personnel of Kansas Refined Helium.

MR. MARVIN MARTIN: We would offer Respondent's Exhibit No. 19.

MR. WACKNOV: No objections.

TRIAL EXAMINER: Let me see the other one.

Are you finished, Mr. Kelly?

MR. KELLY: Yes, I am.

473 TRIAL EXAMINER: Let me see it.

Who was E. R. Wilson?

THE WITNESS: This was Bill Wilson.

TRIAL EXAMINER: All right.

Did you see this posted on the bulletin board?

THE WITNESS: Yes. There was quite some discussion between myself and Mr. Wilson as to the need of this.

TRIAL EXAMINER: Very well, it is received.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 19, was received in evidence.)

(The document above-referred to was marked Respondent's Exhibit No. 20 for identification.)

Q. (By Mr. Marvin Martin) I hand you Exhibit 20 and ask you if you can identify it? A. It is a memo to the American Messer Corporation, start-up personnel and the K.R.H., senior operators.

MR. MARVIN MARTIN: We move for the introduction of Exhibit 20, Your Honor.

MR. WACKNOV: No objection.

TRIAL EXAMINER: Let me see it, please.

When was this posted, do you know?

THE WITNESS: No.

TRIAL EXAMINER: It bears the date October 4, '65.

THE WITNESS: I assume it was then, sir, in that that was its function. We were getting ready for a start-up, I believe. It was that
474 date, I am sure.

TRIAL EXAMINER: It is received.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 20, was received in evidence.)

(The document above-referred to was marked Respondent's Exhibit No. 21 for identification.)

Q. (By Mr. Marvin Martin) I hand you what has been marked Respondent's Exhibit 21 and ask you if you can identify that?

A. It is a memo to all senior operators, to myself and to John Stiff.

MR. MARVIN MARTIN: I move for the introduction of Respondent's Exhibit 21, Your Honor.

MR. WACKNOV: No objection.

MR. KELLY: I do. The term "supervisor" is used in connection with these memos and reports and I think it is calling for a conclusion.

TRIAL EXAMINER: Let me see it.

Well, the use of the word "supervisor" is pretty rigidly hemmed in, not only by the quotations but by my knowledge of the fact that there are standard forms floating around in industries with titles that may be used by supervisors here and nonsupervisors there, so I wouldn't be concerned about that. I assure you I shall give no weight to that conclusion.

When was that passed out, do you know? It says February 14.

475 THE WITNESS: Yes, I would say that was it.

TRIAL EXAMINER: Did it go to all those named on it, so far as you know, senior operators, Henry Tyler and John Stiff?

THE WITNESS: Yes.

TRIAL EXAMINER: It is received.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 21, was received in evidence.)

(The document above-referred to was marked Respondent's Exhibit No. 22 for identification.)

Q. (By Mr. Marvin Martin) I hand you what has been marked Respondent's Exhibit 22 and ask you to identify that? A. Yes. It is a memo to all Kansas Refined Helium personnel.

MR. MARVIN MARTIN: We offer Respondent's Exhibit No. 22, Your Honor.

MR. WACKNOV: No objection.

TRIAL EXAMINER: This is addressed to all Kansas Refined Helium Company personnel. Do you know whether it went to all of them?

THE WITNESS: I would say yes. Our normal procedure was to put one on the board, give each guy one and put one in the log book.

TRIAL EXAMINER: Put one on the board and give one to each employee?

THE WITNESS: Yes.

TRIAL EXAMINER: That is received.

476 (The document above-referred to, heretofore marked Respondent's Exhibit No. 22, was received in evidence.)

(The document above-referred to was marked Respondent's Exhibit No. 23 for identification.)

Q. (By Mr. Marvin Martin) I hand you what has been marked as Respondent's Exhibit 23 and ask you if you can identify that?

A. It is a memo to all American Messer start-up personnel and all senior operators of K.R.H.

MR. MARVIN MARTIN: We offer Respondent's Exhibit 23, Your Honor.

MR. WACKNOV: No objection.

TRIAL EXAMINER: Let me see it, please.

What is the relevance of this?

MR. MARVIN MARTIN: It is a question of authority to call in when they are needed, when Mr. Tyler is gone.

TRIAL EXAMINER: Can it be stipulated, Mr. Wacknov, that the Otis and the Bill means it is Bill Otis and is that —

MR. WACKNOV (interrupting): No.

TRIAL EXAMINER: Who is Bill on this?

THE WITNESS: Sir, I wrote that. It is Bill Sloan, instrument man, and Dwayne Johnson, an instrument man, and the Great Bend also refers to the phone number.

TRIAL EXAMINER: Who is Bill?

THE WITNESS: Bill Sloan.

TRIAL EXAMINER: An instrument man?

477 THE WITNESS: And Dwayne Johnson, an instrument man.

TRIAL EXAMINER: The Exhibit is received.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 23, was received in evidence.)

Q. (By Mr. Marvin Martin) Mr. Tyler, what functions at the plant out there continued in your absence? A. All the functions pertaining to operations, not any functions, of course.

Q. What operations and decisions were necessary to be made in the handling of the plant and its personnel in your absence?
A. There are many activities that occur there with all of the rotating equipment, gases moving, the trailers to be loaded, gases to be transferred from tank to tank, compressors to be started, high pressure trailers to be filled. These functions, we have procedures on many of these things, but they have to be directed and chronologically accomplished. You had to coordinate the people to do these things.

TRIAL EXAMINER: Let me, something troubles me.

You said compressors have to be started. Don't the compressors work constantly?

THE WITNESS: A certain group do. We have another group of compressors that we use to load gaseous helium trailers, to unload, to pump down the gas on a trailer.

TRIAL EXAMINER: These are outside the refinery?

THE WITNESS: These are compressors that we need to start
478 and stop.

TRIAL EXAMINER: When you have to compress gas to put them into cylinders?

THE WITNESS: Or pump air into something else.

TRIAL EXAMINER: That can be adjusted. If you don't start now, you can start an hour from now. You get the work done sooner or later. Isn't that so in that kind of work?

THE WITNESS: We have to deliver products to our customers at a specific time.

TRIAL EXAMINER: It is not the gas coming in?

THE WITNESS: It is not a function of the process.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Marvin Martin) Mr. Tyler, how much time of your own would you estimate that you spend in the control room area?
A. After March or through July and August?

Q. June through August of '66. A. Perhaps a minimum of 20 percent of my time. I have many production calculations and in charge of the engineering. I have engineering calculations to perform for plant performance, production records.

TRIAL EXAMINER: You have men in the control room, don't you?

THE WITNESS: Yes.

TRIAL EXAMINER: That is what they are for?

THE WITNESS: Yes.

479 Q. (By Mr. Marvin Martin) You see that everything is all right. Do you perform any functions in the control room if the other men are there? A. No, but I check with the senior. I walk in and ask how much feed do we have going, how much in the nitrogen tank.

TRIAL EXAMINER: You could tell by looking at the gauge yourself?

THE WITNESS: Yes.

Q. (By Mr. Marvin Martin) Where are the junior operators normally located? A. Outside the control room. They are occasionally in there. Mostly, the function is outside of the control room.

Q. What are they doing outside the control room? A. Checking equipment, changing various absorbers and freeze-outs and dryers, and they are loading trailers and starting these compressors to deliver gaseous products. They are moving gas from one area to another, checking the rotating gear.

Q. When you have a job you want done, do you give the instructions to the seniors or juniors? A. I give them directly to the senior. There may be occasions I by-pass the senior, but I try hard not to do this.

Q. Did you have a discussion with Arel Rodgers following a National Labor Relations Board hearing on or about August 9, 1966, concerning the question of authority and supervisors?

480 A. Yes. I don't know so much about authority.

TRIAL EXAMINER: You had a conversation?

THE WITNESS: Yes.

Q. (By Mr. Marvin Martin) What was that conversation? First, tell us where it took place? A. It took place at my office in the plant. This was a day after this hearing on N.L.R.B. hearing.

Q. Had you been present at the hearing? A. Yes.

Q. Had Mr. Rodgers been present at the hearing? A. Yes.

Q. Had you both testified? A. Yes.

Q. Tell us what the conversation was. A. I asked him to come in, that there was going to be some discrepancies between his thoughts and my thoughts as to what his job was.

TRIAL EXAMINER: As reflected by the testimony?

THE WITNESS: Yes.

A. (Continuing) I asked him to come in, I said — this was immediately after the hearing. I told him I didn't care what the legal description of a supervisor was and I wasn't concerned with that. I was concerned with his concept of his job as compared to mine and I wanted to make mine clear. I said that you are responsible for the plant and you are responsible for the people at the plant during your shift. And

481 if, I said, I must tell you this first, I said, "I must tell you this because I am personally responsible for this and you are responsible for the plant and the people there on your shift. You may not choose to accept this responsibility, but we will have someone here who is responsible for the plant and the people here." Arel said, "Well, Henry, I don't think you can say in action I haven't done that." I said, "I have dealt with you straightforwardly, openly, honestly throughout my time here and I want to keep it that way, and I want to tell you that

personally, I was concerned and felt that you had denied responsibilities that I have personally given you in this hearing." He said, "I don't believe I have." He said, "We are both, you and myself both tend to give only those points that are superfluous to this hearing, but I don't think I told an untruth in the hearing." I said, "I can't say surely I feel that you had. You denied the responsibility I gave you." He said, "When the transcript comes out, you ought to read it. If I didn't, I want you to read it carefully; I will accept an apology from you. And if I did, I will apologize to you and make every effort to get the record straight," but I believe at that point we let it go.

TRIAL EXAMINER: Proceed, Mr. Martin.

Q. (By Mr. Marvin Martin) Mr. Tyler, had you had an occasion, concerning a Mr. Sims and a Mr. Stahlman, that was brought to your
482 attention sometime during late '65 or early '66? A. This was in the fall of '65.

Q. What was the incident? A. Russell Sims had told Bill Stahlman to get into a tank and clean it out in some manner and he refused. The next morning Sims came to me and told me of the incident. In fact, he said I became quite angry; it was a heated discussion. I then went immediately and talked with Mr. Bill Wilson concerning the incident and telling him he better get Stahlman in there and talk to him.

Mr. Wilson did nothing, and within two or three days I talked to Mr. Stahlman and I told him that he worked for us, and he would do whatever Russ says or he wouldn't work there.

Q. Later, in the operation in the spring of 1966, did you have any conversation with one or more of your senior operators concerning their responsibilities or their authorities? A. Yes. It was as a result of this incident with Stahlman. I went to several people, American Messer, and Airco, Mr. Bob Bridges of Air Reduction Company, discussed how to handle these problems or problems of this nature, how they handled them in their plants.

We decided the best way to handle an incident of that nature was for them to call me, not to give the senior operators the authority to fire but to settle it right at the time it happened. So, I went to all the senior operators and told them, and I talked at some length to Russ,

483 that they did not have the authority to fire the people but if an incident of that nature came up, to give me a call and I would come out immediately and I would do the firing, just as a practical matter, because they worked for these people but I would back him to the full extent. And no other aspect of authority was discussed.

Q. Did Mr. Sims ever have a conversation with you about his thinking about being manager of this plant? A. Yes. After the National Labor Board's decision stating they were supervisors, some period in between there, shortly thereafter, Russ was concerned about his status, his relationship to his job and the company, and we discussed it several times. On occasion, we were in the control room, hall, over to the side, I told him, "Well, sir, get in your car and go see Mr. Angle and tell him your concerns." He mentioned that, well, this was a time before you came, but American Messer had indicated to me when Bill Wilson left that I would be a plant manager.

* * * * *

484 CROSS EXAMINATION

Q. (By Mr. Wacknov) * * * What's the difference in pay, Mr. Tyler, between the junior operators and senior operators?

* * * * *

A. Yes, normally, eighty, eighty-five cents an hour.

Q. Well, now, I hand you what has been marked General Counsel's Exhibit No. 12, which is the hourly pay of each of the employees on the day on which they received pay increases. Mr. William Pickerill, on page 3, was he a senior operator at the time these six indi-

485 viduals who were fired were still working at the plant?

A. I don't recall. He had substituted on vacation through that summer

for the seniors. I don't recall whether he was classified as a junior operator or senior operator.

* * * * *

Q. After your senior operators, after the Kansas Refined Helium took over control in the spring of 1966, did you have a conversation with your senior operators about what their responsibilities would be? A. Yes, at this point where Messer was leaving and senior operators were to assume responsibility of the plant, we gave raises, Mr. Owens and I, well, we didn't talk to each. I didn't talk to Harry Harms, Owens
486 talked to him by himself.

Q. And he was a senior operator at that time? A. Yes, but Mr. Owens talked to Mr. Sims, and Rodgers and Harms.

Q. Did you talk to them in a group or separately? A. Separately.

Q. Was the conversation about the same to each of them? A. Yes.

Q. What did you say to them? A. We told them that they were to assume responsibilities of the operation of the plant, that we were there to make money, any areas where they saw we could save manpower, time, product, whatever, to tell us and let us know. We considered that part of the management part of their job to help us make money.

* * * * *

487 Q. Now, Mr. Tyler, you spend eight or nine or ten hours at the plant regularly every day, is that correct, except weekends? A. Yes.

Q. There are other times when you go out to the plant other than your regular hours out there, aren't there? A. Yes.

Q. What times are these? A. In the case of trouble it could be any time. I go out occasionally on weekends to do additional work.

488 Q. Sometimes you go out on weekends when there isn't any trouble? A. Right. I have a lot of paper work to do.

* * * * *

491 Q. (By Mr. Wacknov) With regard to the senior operators' use of this notice when they have to call people, do they still call you out when there is a problem? A. Well, depending on the nature of the problem, if it's beyond the scope of their knowledge and capability to handle, they call me, yes.

Q. If they can't get hold of you? A. We call Mr. John Stiff.

Q. What if they can't get hold of John Stiff? A. I imagine they call Norman Klein.

Q. What if they couldn't get hold of Norman Klein? A. They would call Mr. Angle.

492 Q. It's still in effect? A. Yes, I imagine it's in accordance with the magnitude of the problem. Mr. Angle isn't an engineer; he couldn't help them.

* * * * *

Q. (By Mr. Wacknov) Mr. Tyler, who else besides the senior operators signed the time cards? A. Myself.

Q. Is your signature required to be on there before the time cards are valid? A. Yes.

Q. Mr. Tyler, I hand you what has been marked as Respondent's Exhibit 22. Directing your attention to the bottom paragraph, is there some mention of a blue book in that memorandum? A. Yes.

Q. What is this blue book? A. It's a ring binder in which we had very few operating instructions; as a matter of fact, it doesn't contain many operating instructions, but we started it as an initial book

493 of data out in the control room. It has charts which show the capabilities of the various tanks at various pressures. It has some literature on how to operate a particular control. I don't recall everything that was in there.

Q. Isn't it a general book of instructions of how the plant is to be run and what gauges mean what, and what the pressures ought to be, or that sort of thing? A. No, sir. It's not that.

Q. Now, the last paragraph of this Exhibit says, "These instructions are additions to the ones in the blue book." Were there more instructions in addition to this piece of paper marked as Respondent's Exhibit 22, and the instructions in the blue book? A. May I read what he is talking about there?

Q. Yes. A. All right; there are three pages out of — I'm not sure how many are in the book, thirty, forty, where we listed the standard functions that occur during a shift, that must occur, blow down the compressors. We end our day at 10 o'clock in the morning. On that shift at 10 o'clock the plant production reports. I can get the book, those three pages of instructions. These are things that need to be done daily and on that shift, and put them in there.

Q. Where else do the senior or junior operators receive instruc-
494 tions, from where else? A. Verbally, from special-order book.

Q. What is this special-orders book? What kind of instructions are written in there? A. Many kind of instructions. In fact, we have a total lack of communication problems, particularly when American Messer was there, and we started a daily orders book first, no, started the special orders book first, and I intended this to be for items which we might discover that an engine after cooler has to run at 140 degrees.

TRIAL EXAMINER: Is it anything more than a bound book of memorandum notes from one man to another?

THE WITNESS: No, sir, that's all.

TRIAL EXAMINER: It's continuous; the man does what he has done, and it disappears, is that so?

THE WITNESS: That's the book that was in here.

TRIAL EXAMINER: It happens to be more practical to have it in a bound book to check back on it?

THE WITNESS: Yes.

Q. (By Mr. Wacknov) Who makes the entries in this book?
A. Myself, John Stiff, and Mr. Owens made some.

Q. Do senior operators ever make instructions in this order book? A. Not to my knowledge; I don't recall.

Q. Who had access to this special-orders book?

495 A. It's on the control panel. Everybody reads it.

Q. Were they supposed to read it? A. Yes.

Q. Did you give them instructions to read it? A. I don't recall instructions, but I would have. If I didn't, I should have.

* * * * *

TRIAL EXAMINER: Did you put down what needed to be done?

THE WITNESS: Yes.

TRIAL EXAMINER: You didn't say who was to do it?

THE WITNESS: Normally, in an evening I would go out, if there was a particular thing that needed to be done, I would write it in this thing and, ordinarily, a senior was there and I said, "Read it; is there any question"? I set it down and I didn't say "to you only" or anything

496 of that nature.

TRIAL EXAMINER: You knew who would do it when you wrote it in the normal course?

THE WITNESS: Yes, the crew.

TRIAL EXAMINER: You knew either a junior or senior would have functions in that area and would carry the orders out?

THE WITNESS: Yes; that was the purpose of putting it down.

* * * * *

510 CROSS EXAMINATION

Q. (By Mr. Kelly) * * * From a layman's standpoint, in connection with this helium plant, Mr. Angle's plant, would you agree — I'm sure you would — that this is probably the most automated helium plant in the country?

TRIAL EXAMINER: We don't really need to know this. Is this pretty well automated?

511 THE WITNESS: Yes.

* * * * *

Q. (By Mr. Kelly) In connection with your operation, primarily because of the automated factors and the control board circumstances and arrangement, your operation for the most part is routine, is it not, sir? A. There are many, many routine functions, yes.

Q. But with any type of rotating gear there is precision to make sure they work like they are supposed to work?

TRIAL EXAMINER: The plant runs if the machinery runs.

THE WITNESS: Not necessarily. Process things can happen.

TRIAL EXAMINER: Absent malfunction?

THE WITNESS: Right.

TRIAL EXAMINER: Insofar as the production plant, I'm not talking about loading trailers; that obviously is different.

Go ahead; keep it brief.

Q. (By Mr. Kelly) Some of the things you said would show compression or an absorber freeze-out, dryers, these types of things, this is routine operation, is it not, with respect to the responsibilities of your operators, isn't it, sir? A. Yes.

* * * * *

512 Q. (By Mr. Kelly) I think you have answered that question. In that connection, with respect to these employees, the six that were fired, Mr. Tyler, did you not write letters of commendation to some of them after they were fired? A. I wrote letters of recommendation.

Q. In a commendable fashion, I think, were they not? A. Yes.

Q. As the man in charge of operations, were any of these men fired because of their work ability, sir? A. As far as their what?

Q. As far as their ability and skill in performing these operations? A. Not on their ability and skill, no.

* * * * *

513 Q. (By Mr. Kelly) With respect to distinguishing junior opera-
514 tors from senior operators, in substance, is it true that a senior operator is a more skilled employee? A. I would say yes.

* * * * *

518 Whereupon,

GEORGE A. ANGLE

was recalled as a witness by and on behalf of the Respondent and, having been previously sworn, was examined and testified further as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) State your name. A. George A. Angle.

Q. Mr. Angle, you previously testified in the hearing? A. Yes, sir.

Q. What is your occupation? A. I am a geologist.

Q. Do you also own a number of companies in the oil business? A. Yes.

Q. How are these owned, corporately owned or individually? A. All privately owned by me.

Q. Can you give us a brief description of what your business complex is?

519 A. Yes, sir. I have Frontier Oil Company, Red Tiger Drilling Company, Red Tiger Trucking, Red Tiger Cat —

TRIAL EXAMINER (interrupting): What is the Cat Company, Caterpillars?

THE WITNESS: Yes, sir, Caterpillar.

A. (Continuing) — Hayes Tank Service, Great Plains Drilling Company, Comanche Supply Company, —

Q. (By Mr. Marvin Martin) By way of summary, do all of these businesses, are they in the search, or extraction and processing, and distribution and sale of oil and gas products? A. Yes.

(Continuing) — and Kansas Refined Helium Company.

Q. When did you start these businesses? A. In 1954.

Q. Have you gradually added to them over the years? You didn't start all of them at once? A. No, sir.

Q. What did you start first? A. Myself and one employee, Frontier Oil Company.

Q. In 1954? A. Yes, sir.

Q. And by 1966, approximately how many employees did you have in Kansas Refined Helium Company and the other companies? A. Approximately 115, between 115 and 120, I believe.

Q. I want to refer you to July of 1965. Did you at that time enter
520 into some kind of an agreement with the American Messer Corporation relative to hiring some employees to start operating the Kansas Refined Helium Company?

TRIAL EXAMINER: Excuse me. I want background, of course, but haven't we had enough?

MR. MARVIN MARTIN: We have if Your Honor —

TRIAL EXAMINER (interrupting): A process whereby American Messer started, built and started it, and handed it over. By the dates that are involved, it is clear it was in Mr. Angle's hands, although there were American Messer employees and things done by them; so, by the spring of 1966, you had taken over Kansas Refined Helium, hadn't you?

THE WITNESS: Yes, sir. Approximately in April I had entered into an operating contract. They had two contracts.

TRIAL EXAMINER: Who did?

THE WITNESS: American Messer, a construction contract, and after the plant was constructed and started up at approximately the same time the construction contract was let in 1964, conversations of an operating contract, whereas they would operate as a contract operator, were started.

TRIAL EXAMINER: In other words, after they built it, they would get it running and turn it over to you as an operating company?

THE WITNESS: No, sir.

TRIAL EXAMINER: We want to keep this very superficial. We
521 are dealing with various concepts of law.

Q. (By Mr. Marvin Martin) American Messer hired the people in July 1965 to run this plant? A. They had interviewed and hired these people prior, and they reported to work in July '65. American Messer hired all the operating people.

Q. You did not hire or interview any of those people? A. No, sir.

Q. By the time American Messer left the scene and it was under your hands in the spring of 1966, had you at any time ever interviewed any of the personnel who worked at the Kansas Refined Helium Company? A. No, sir.

Q. In June of 1966 — let me withdraw that question and simply ask you this? Can you identify what has been marked as Respondent's Exhibit No. 9? A. Yes, sir.

Q. Will you tell the Court what that is, please? A. It is an anonymous letter which I received.

Q. About what date? A. It was mailed from Otis the morning of June 25th. I received it in my office in Wichita on Monday, June 27th.

TRIAL EXAMINER: May I see that, please?

That is the envelope, is it?

THE WITNESS: Yes, sir.

522 TRIAL EXAMINER: Proceed.

MR. MARVIN MARTIN: If it is not in evidence, I wish to offer it.

TRIAL EXAMINER: I am sure it is in evidence.

MR. MARVIN MARTIN: It is Exhibit No. 9.

TRIAL EXAMINER: I think it is 10-A.

MR. MARVIN MARTIN: There are three of these letters.

TRIAL EXAMINER: Now, I remember. I am sorry.

MR. MARVIN MARTIN: We offer Exhibit No. 9.

TRIAL EXAMINER: That is marked for identification, but not in evidence.

You received that in the mail. I am not sure what it proves, but let's see how it comes in.

Any objections?

MR. DePROSPERO: No objection.

TRIAL EXAMINER: That will be received, Respondent's Exhibit No. 9.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 9, was received in evidence.)

Q. (By Mr. Marvin Martin) Mr. Angle, at the time you received this Respondent's Exhibit No. 9, had you, prior to that time, had any indication of dissension or problems, personnel problems, there at the plant in Otis? A. None.

523 Q. Now, did you talk with Mr. Owens as a result of receiving that letter? A. Yes, sir.

Q. When did you talk with him? A. As soon as I saw the letter, I called him and asked him to come into Wichita the next morning.

Q. Did you discuss this matter with him the next morning in Wichita? A. Yes, sir.

Q. What was your discussion? A. I let him read the letter, and from its contents it was indicated all of the employees and supervisory personnel were very upset and discontent at K.R.H., and this letter was in particular about him, and this was the first —

Q. (Interrupting) What was your conversation? Just tell us what you and he said concerning this letter. A. I asked him if he had any idea who wrote this or what would have caused it, and he did not know. He was quite thunderstruck, and he said, well, he had been working awfully hard for me there and had been harsh in some cases, harsh with some employees to attempt to run the plant efficiently and save me money, and I told him that if in trying to do a good job for me, he alienated all of the employees, he was doing disservice to himself and a big disservice to me, because this was the only plant of this nature that had ever been built, and so it was impossible to go and hire

524 people who were trained in this plant, the time we had already had in these people if anyone left.

Q. What instructions, if any, did you give him? A. I told him that I wanted him to treat the employees — the advice I gave him, that I had used with my employees in all my business life, was to deal with each person as an individual, respect them as an individual man, and treat them in a fashion, if he were in their position, as though he would want to be treated.

Q. Did you take any action against Owens as a result of this letter? A. No, I told him that I wasn't going to take any action. I wasn't going to discuss the letter with anyone else, that the letter read as though someone might be unbalanced, who would write a letter like that, so for him to return to the plant and treat all the personnel in the fashion I had just described to him.

Q. Did you sometime in late July have Respondent's Exhibit 10-A brought to your attention? A. Yes, sir.

Q. Now, how was it brought to your attention? A. Mr. Norman Klein was at the K.R.H. plant and called me.

Q. Do you recall when? A. Yes, it would have been July 26th, 27th. He read the letter to me and I told him to mail it into Wichita
525 right away.

Q. Did you go to the plant in the months of July and August? Did you spend some time out there yourself? A. Yes, I am sure I made some visits, short duration visits to the plant during, sometime during July and August.

Q. During this period of time, were you aware that there was a petition for representation of election that had been filed, and that there was union activity in the plant? A. To define a period of time, on June 30th or July 1st, I received in my office in Wichita in the same mail a notice that the union had filed that they represented a majority of my employees in a notice that they had filed an application with the National Labor Relations Board that I had refused to participate, that I had refused to bargain, or something like that. I remember in the

same mail here was one side and here was the other side. This was June 30th, July 1st. In the first week, I had received the first anonymous letter.

Q. Did you have any occasion to have Respondent's Exhibit No. 11 brought to your attention at any time? A. Yes, sir. I received this in the mail. It was mailed from Great Bend on August 29th, and it is normally one-day service, so I received it on the 30th or 31st in my office in Wichita, August.

Q. At the time, then, you received this letter, which is dated Respondent's Exhibit No. 11, did you know who had written the first two
526 anonymous letters by that time? A. No, sir, I had absolutely no idea, and in my mind —

TRIAL EXAMINER (interrupting): No, no. That is the end of the answer.

Q. (By Mr. Marvin Martin) Respondent's Exhibit No. 11, when it arrived at your office approximately the first of September, last of August, did you take any action as a result of the receipt of that letter? A. Yes, sir.

Q. Let me ask you another question. What was the general financial situation of your company at that time?

TRIAL EXAMINER: How does that come into this case?

MR. MARVIN MARTIN: I think the evidence will show that the witness personally was responsible for about a $6,000,000 indebtedness on the plant. It is a life's work and life's savings, and that the problem of having this kind of letter and these kind of problems at the plant caused him to take action, which he took and to which he will be testifying to.

TRIAL EXAMINER: If you ask him that question, will you stipulate that you get that answer, Mr. Wacknov? That is a good succinct statement.

MR. DePROSPERO: We would object to this line of questioning, Mr. Trial Examiner. We don't think it is relevant.

TRIAL EXAMINER: I think it is in the case already. If it is not in this case, it is in those letter. Isn't that in the letter of dismis-
527 sal?

MR. DePROSPERO: Some of the assertions are.

TRIAL EXAMINER: I heard it; I recognized that.

Q. (By Mr. Marvin Martin) What action did you take as a result of receiving this third anonymous letter? A. This third letter named nine employees by name at the plant, and inasmuch as we had a union election already set up for September 28th, it appeared to me that the employees out there must be at odds with each other. There was so much dissension and something was terribly wrong, I knew. I made a decision I must immediately go out, and inasmuch as I never had interviewed any of these people, have a lengthy interview with each and every employee at the plant.

Q. In a short statement, why did you feel you had to go out to the plant?

TRIAL EXAMINER: He just said so. The record shows he did. There is no doubt. You went out and interviewed each employee, and saying at the beginning of the interview, at the beginning of each interview saying, "Let's interview just as if I had never interviewed you."

Q. (By Mr. Marvin Martin) Did you interview all the employees at the Kansas Refined Helium Company? A. Yes, sir.

Q. When did you start those interviews? A. September 13th.

528 Q. Do you recall how long they lasted? A. Through September 16th and one or two on September 19th.

Q. How long during each day did you normally conduct the interviews? What period of time were you normally spending? A. Because of the three shift situation, the 24 hours, the interviews might range from 8 or 9 o'clock in the morning until 3 o'clock in the morning.

Q. Will you tell us —

TRIAL EXAMINER (interrupting): Excuse me; you did interview every employee?

THE WITNESS: Yes, sir.

Q. (By Mr. Marvin Martin) Mr. Angle, let me direct you, for example, to the interview of Mr. Sims. Would you tell us, to the best of your recollection, what your conversation was with Mr. Sims in this interview? A. Yes, sir. I told Mr. Sims that since the first day when they reported for work, they had a lengthy letter from me, and I tried to keep them informed as to what was going on by mail between now and then. I apologized that I had never met him or interviewed him, and this was unlike any of my past business practices, but, finally, now, here I am for a situation that I feel is desperate, so now, I am going to interview you, and in this conversation I will ask you a great number of things, some of which I will know the answers to, many of which I won't, and I wanted you to feel free to say exactly what you think. I mentioned to him that the most valuable thing each

529 person owns is his self-respect. If they lose any of that, they are the lesser of a man the next day, so you talk flat out to me because that is the way I have all my life and I want you to. If when we finish I disagree with what you think, when you leave, I will respect you as a man. If you lie to me, I can't respect you.

Q. Let me stop you there. In general, did you tell each employee this type of remark that you have given here? A. Almost verbatim, after going through it with each and every one. This was the opening of my interview to each and every one, yes, sir.

Q. In particular, do you recall any of the particulars of what you and Mr. Sims talked about? A. Yes. The next thing that I talked about with each of them was this problem of the dissension, and I went to the plant with the knowledge that I must find out who or what group of people were writing these letters, so that was my purpose of the interviews. Then, I knew two of these letters, the first and the third, the only people who would send them would be someone involved who

had written them, or were in a group that had written them, and this was the first thing I discussed.

I said to each one, the first letter about Buddy Owens, I was sitting right beside them and would ask them to read it. Then, I would
530 watch them carefully as they read it for any visible sign that they had ever read it before, or for their reaction. Then, I had them read the second letter, which had been mailed to each and every one, and had been placed on the bulletin board with my company letter. Then, I showed them the third letter. I would discuss the letter with them. One of the things I was trying to desperately find out was who this group was, and I would say, "Wouldn't you consider anyone that wrote a letter like that to have an unbalanced mind," to see if I would get a reaction of any kind.

Q. What did Mr. Sims say, for example, when you went through these questions with him concerning the anonymous letters? A. He read them carefully, and when I asked him the question if he felt that whoever wrote that must have an unbalanced mind, was mentally sick, he agreed with me and said, "They must be."

Q. Did you ask him if he had written the letters? A. Prior to that, I told him that —

MR. DePROSPERO (interrupting): Objection. It is not responsive to the question.

TRIAL EXAMINER: This is a narrative. It is not important. Go ahead, we will get it.

A. (Continuing) Part of what I said, that the first letter that I had received and the second letter I had received, I had taken my microscope and compared it with the letter from our K.R.H. typewriter, and under
531 the microscope I decided that the first and second letter had been written at the plant, and the nature of the plant being what it is, it couldn't have been written in the daytime; that is when the largest group of people are there, so, it had to be written on the evening shift or the morning shift when there are only three people there.

TRIAL EXAMINER: Did you tell all this to Mr. Sims?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Go ahead.

THE WITNESS: I told this to each and every one.

A. (Continuing) So, the first two letters were written on that typewriter and they had to be written at night. That meant that there was more than one person aware of them.

Q. (By Mr. Marvin Martin) Let me ask this question. How long did the various interviews take? A. The interviews averaged about two, two and a half hours. The shortest one was probably 30 minutes, and the longest one might have been three hours, three and a half hours.

Q. Did you, in general, cover the same type of information in your various interviews even though more in length in some others? A. Yes. In fact, at this point I would say that in continuity I have gone through this same conversation with each of the persons that I interviewed.

Q. Now, were you able to determine in watching Mr. Sims, I
532 assume that is who we are talking about, did you make a judgment as to whether or not Mr. Sims had written these letters?

MR. KELLY: I object. Yes or no it is irrelevant or incompetent.

TRIAL EXAMINER: He can say yes or no. The next question is going onward. This man is going to establish his own qualification, a polygraph.

Q. (By Mr. Marvin Martin) Did you form an opinion? A. In Mr. Sims' case, as he read these letters —

MR. KELLY (interrupting): Yes or no.

Q. (By Mr. Marvin Martin) Answer yes or no if you formed an opinion after watching Mr. Sims read the letters as to whether he was the man who wrote them. A. Not at that time in my interview.

TRIAL EXAMINER: That is the answer, thank you.

Q. (By Mr. Marvin Martin) During the course of the interview, or at the termination of the interview, did you reach a conclusion in your mind as to whether or not Mr. Sims had been involved in writing those anonymous letters? A. Yes, I did.

Q. Would you state what that conclusion was?

MR. KELLY: We object as being incompetent.

TRIAL EXAMINER: I will listen to argument. There comes a time when the operation of a man's mind, and arms, and tongue tend to get awfully close. I am not inclined to be too rigid at this point.

533 There is no jury here. I have heard more than one case in my life and I will decide it on the legal evidence. I think in justice to this Respondent, I am going to permit these questions. I am not assigning any weight and I won't until I make my decision. The objection is overruled.

Can you answer the question? Do you remember it?

THE WITNESS: Yes, he asked me if I had reached a decision.

TRIAL EXAMINER: Yes. Had you? And what was it, I believe was his question.

THE WITNESS: My decision was based, not only on the interview —

Q. (By Mr. Marvin Martin — interrupting) Just tell us what your decision was. A. I decided Mr. Sims was the author of the first letter.

TRIAL EXAMINER: Next question.

Of the first letter, is that what you decided? Sims was the author of the first letter?

THE WITNESS: Yes.

TRIAL EXAMINER: Take this step by step. Go ahead.

Q. (By Mr. Marvin Martin) What else did you and Mr. Sims discuss in the course of this interview? Did you talk about the plant,

its operation, or its indebtedness? A. Yes. We talked about the plant, its indebtedness, my business background, which had been followed from the beginning to date in the lengthy letter that all employ-

534 ees had received by mail on July 11. I think we referred back to a lengthy telephone conversation I had had with Mr. Sims in approximately the middle of August when he had mentioned that he had worked at Victors Refining, and I reminded him that in this conversation he had told me that when he was employed by American Messer, they had indicated to him whenever American Messer's man, Bill Wilson, left, that he would possibly be considered for the plant manager's job, and I reminded him in the same telephone conversation —

Q. (Interrupting) Particularly with the interview, now, if you will, please. A. I am in the interview. I reminded him of this in the interview.

Q. Go ahead. A. He had related a story to me that while he was at Victors a new plant manager came in who was mentally unstable, fired some people, and his general description of that incident and terminology almost directly paralleled that letter. Then, I asked him if he had written it.

MR. DePROSPERO: Objection, move to strike the part about what his comment paralleled the letter.

TRIAL EXAMINER: Did you point out to Mr. Sims some of the words he used were repeated in the letter, or did you simply form that conclusion and make the statement?

535 THE WITNESS: I made the statement to him that the story, and the terminology, and the use of words, "He acted like he was God. He was mentally unstable," almost paralleled this letter exactly.

TRIAL EXAMINER: All of this you said in this interview?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Motion to strike is denied.

Q. (By Mr. Marvin Martin) Do you recall anything else that was said in your interview? A. Yes. I asked each employee this question, which was predicated on the fact that in —

TRIAL EXAMINER (interrupting): We do not wish to have in the record at this time the processes of your mind, only what was said. If it was said, you may repeat it. We don't want the reason at this time, please. Do you follow me?

THE WITNESS: Yes, sir.

Q. (By Marvin Martin) To the best of your recollection, give us the other statement that you can remember, you and Mr. Sims had with each other in that interview. A. Yes. I asked him if he had signed a union card.

Q. What did he say? A. He said he had.

Q. What else did you ask him? A. In almost every case, then, I asked them why. In other words, knowing that they were going to have an election, why did you sign it? What prompted you? Why did

536 you sign it?

Q. Why were you interested in knowing why they signed it?

TRIAL EXAMINER: I will form that conclusion, I think.

Q. (By Mr. Marvin Martin) Go ahead. A. He wanted a booklet of written benefits that American Messer had promised him. I asked him, "Are you happy? Are you satisfied with your job? Are you dissatisfied"? "Yes, sir, because we don't have these policies and these benefits written down in a booklet. American Messer —"

Q. (Interrupting) Did he say he was satisfied or dissatisfied? A. Dissatisfied. I said, "I don't understand what you mean by this because at the time when you started, in the first ten months all the employees that were here had two raises. You started with a group insurance policy of which you pay half. You have your vacation policy, which is the same as my other employees. You can take it if you want it or you can be paid for it. You can take it whenever you want it. You

can take it in pieces, three days here, four days another time. You can take it by the day, if you want it all, subject to your selecting your time so it doesn't interfere with your work or sick leave policy. This is different than most people's in that there isn't any limit on it. If you are sick too long a time, then, we will make some settlement with you, but there isn't any five days or ten days. I don't understand what
537 you are dissatisfied about that." The whole point was that it wasn't written down.

I said, "Does that mean you don't trust me because it is not written down"? There was dissatisfaction in this area is what was so intangible and what caused my puzzlement from the standpoint of salaries and these fringe benefits.

Q. Not what your thoughts were. Did you discuss the fact with Sims that his name appeared in this third anonymous letter? A. Yes, sir, and he commented on that. He was angry that it was there. I mentioned to him that someone that was mentally unbalanced enough to do something like that, the one dodge they could do would be to insert their own names so they would remove suspicion from him.

Q. What else do you recall discussing with Sims in this interview? A. I told him the reason I was interviewing him, and I would interview each other employee, and when I finished interviewing, I would make an announcement as to what I was going to do, but I must find whoever was involved in this thing. Then, I indicated there would be no conclusion of my thoughts until I had interviewed every one of them and, then, I would announce what I thought, and that the union was entirely secondary.

MR. KELLY: Was this part of a conversation?

THE WITNESS: Yes, sir.

538 A. (Continuing) The union election that was scheduled was entirely secondary to what I was there for, that I must find this group of malcontents, the agitators that were doing this, causing this tremendous dissension. I couldn't gamble on my whole life's work, nor

on anything happening to the plant, or the people, and the union election or vote which was coming up. We were getting ready to start a plant turnaround. I had to find whoever this was and then get them out the gate and never to return. Then, I would feel better. I would be able to sleep. I was sure the people still employed there would feel better. This conversation was said to all employees.

TRIAL EXAMINER: Go ahead, Mr. Martin.

Q. (By Mr. Marvin Martin) Do you recall anything else that you talked about to Mr. Sims? Let me ask you this. I know we are attempting to cover some eight days. In interviews with some of your other employees, let's take, for example, Mr. Rodgers, can you recall any special things that you and Mr. Rodgers talked about that you did not talk about to Mr. Sims and some of the others?

TRIAL EXAMINER: Have you any recollection of talking differently with Mr. Rodgers than with the others?

THE WITNESS: Yes, sir. I said all of these things, and I was trying to consider any duplications, to try to think of particular —

TRIAL EXAMINER (interrupting): The question was, was there
539 something special you said to Mr. Rodgers that you did not say to the others?

THE WITNESS: Yes. I cannot recall whether I — I am sure I didn't. I am sure I did not ask him if he signed a union card because he had appeared at the hearing in August, and in any conversation on the basis of union, my recollection is that Mr. Rodgers told me that all of his life he had been violently opposed to any union, but just in the last several months he had decided that he was all for a union at my plant there, and he was quite adamant about this, about the policies, job security was mentioned, and we must have this written down.

I asked him what changed his mind from being violently opposed to a union and now he was so violently for a union at the K.R.H. plant.

MR. KELLY: Just a minute. Unless you are stating conversation, this "violently for a union" is language and not Mr. Rodgers.

TRIAL EXAMINER: Did you say that to Mr. Rodgers?

THE WITNESS: Yes, sir. This was the conversation. I said, "You were to against; now you are so pro."

TRIAL EXAMINER: Mr. Angle, if you didn't use the words — you have been present all through this proceeding and I am sure you have heard me often say to a witness, "Please try to put this as closely as you can into the words that were used at the time," and I had as-

540 sumed that you were doing that. I ask you again, please try to keep it to the words you used and the other person used.

THE WITNESS: That is what I am doing.

Q. (By Mr. Marvin Martin) Go ahead. A. If his change of mind from being so opposed to so pro union, violently opposed or violently for, was based on the fact that in the latter part of May, the 23rd, when raises were granted to the senior operators, if that was what caused him to make him have this change of heart; the other three operators were given a 35-cent raise and he received a 25-cent raise.

Q. What did he answer? A. Well, at the same time, this was part of my question to him. If he wasn't told why this difference by Mr. Owens, it was because he wasn't performing his duties as well as the other three, if that was the cause of this change of heart. His answer was no, that wasn't it at all. He was interested in — he was speaking primarily for the rest of the personnel.

Q. Mr. Angle, did you and Mr. Rodgers discuss these three anonymous letters? A. Yes, that is the first. That is the order of the conversation with Mr. Sims, was the same throughout.

Q. Did you form any judgment or opinion as to whether Mr. Rodgers had had anything to do with the writing of the letters when you watched him read them and you questioned him concerning them?

541 A. Yes.

Q. What judgment did you form? A. I decided he had seen this letter before.

Q. Which of the letters are you talking about? A. I am speaking of the first letter I received.

Q. The one about Mr. Owens? A. Yes, sir.

Q. Did you discuss these same general things with the other people that you ultimately discharged, like Mr. Harris, Mr. Johnson, and so forth? A. I discussed these same things with every employee.

Q. After you had completed discussing these, having these interviews and discussing with the various employees these items, did you form any judgment about whether or not you were going to take any specific action in relation to some of the employees? A. After consulting with the overall total, all of the employees —

Q. (Interrupting) What did you decide? A. (Continuing) — and with Mr. Klein and Mr. Tyler, I had formed my judgment, opinion, as to each employee.

Q. On the six we are involved with here, you mentioned Mr. Rodgers and Sims. What judgment did you form concerning the other people that were involved, like Mr. Harris. Let's take him.

542 A. All of the people that — Mr. Harris, in my interview with Mr. Harris, it was identical with the ones I have just described.

Q. What judgment did you form? What decision did you make about Mr. Harris? A. I decided Mr. Harris was a part of the group that agitated the malcontent.

MR. KELLY: I am going to object to the word "malcontent." It is a conclusion by this witness, and I ask him to base the grounds for his word.

TRIAL EXAMINER: Motion denied. Objection overruled. Go ahead. I will not be misled by his use of the word.

Q. (By Mr. Marvin Martin) What about Mr. Johnson? Did you form a judgment as to him? A. I decided he had previously read this letter, that he was part of the group that had been involved in these letters.

Q. What about the other people who were discharged, Mr. Bishop — A. (Interrupting) Mr. Bishop, I had the same conclusion.

Q. And also the other people I have not named. A. Mr. Garrett —

Q. (Interrupting) When you had your conversation with the other employees, let me ask you, Mr. Lynch, for example, what did you and Mr. Lynch talk about, if anything, that was different from what you have just said concerning these interviews you just discussed. Did you talk
543 about union with Mr. Lynch? A. Yes, sir.

Q. What was that conversation? A. He told me he had signed a card. I had read his application blank and I asked him, I said, "You have been in unions for a long time. You were a union steward, weren't you"? And he said, "Yes."

Q. What about Mr. Harms? What conversation, if any, was different from what you testified to here that you can recall? A. I told Mr. Harms that he had been at Victors ten years at the same time Mr. Sims was there. "You were in the union there"? He said, "Yes." When I asked Mr. Harms if he was satisfied with his job here, he said he had never been in any job where there was so much tension, so much agitation, that even the crews were against each other, leaving things undone for the next crew to do.

MR. KELLY: I inject an objection as to hearsay, as to what these other people have to say.

TRIAL EXAMINER: I understood you to say that Mr. Harms said this to you?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: That is why we have been taking the contents of the interview. If Harms said it, we will take it.

Q. (By Mr. Marvin Martin) What position did Mr. Harms hold at that time, at the time of the interview?
544 A. Senior operator.

Q. What position does he hold now? A. He is the assistant manager of operations.

Q. Has he been promoted? A. Yes, sir.

Q. What about Mr. Lynch? What job does he hold now? A. He is in the maintenance division. He has worked partially, there is a flexibility, as junior operator, and I believe he is back in the maintenance division now.

Q. Mr. Angle, following the time that you had the interviews, and it has been stipulated that you did issue six discharges, were these the only actions that you took there at the plant or did you take other actions? A. No. I asked for and got the resignation from Mr. Owens, the plant manager.

Q. When did you do that? A. His resignation was effective September 17th.

Q. Let me interrupt you here. What did you and Mr. Harms talk about in your interview with him —

TRIAL EXAMINER (interrupting): We have been discussing that for the last ten minutes.

Q. (By Mr. Marvin Martin — continuing) — concerning the operation of the plant or how to improve the operation of your plant? A. We had a lengthy discussion.

Q. How long?

545 A. Oh, between two and three hours. In fact, that occupied the largest percentage of our conversation.

Q. What was that conversation about with Mr. Harms? A. He explained the senior operators had too few men working underneath them on their crew, that he could not leave the board because of only having the two employees. He just couldn't get away from the board more than a few feet in order to keep the plant running properly, and that if a main line compressor went down, the two employees, it took them both to start one of the big engines, or if they were loading a liquid helium trailer, it occupied both of his junior operators.

So, then, if they came in and reported something outside the plant where the instruments couldn't give him a clear-cut idea of what the problem was, he couldn't leave the board to go see it. As a result, he told me that, as we explained last winter, with winter coming on, we needed more steam lines and we needed more boiler effect.

Q. Did Mr. Harms comment on the difference between how your plant operated and the refinery he previously worked at operated?
A. That was the first part of the conversation with me.

MR. KELLY: I object to that. It is irrelevant. I don't know what this has to do with the issues.

THE WITNESS: Well, —

TRIAL EXAMINER (interrupting): Wait a minute. Its relevance
546 sometimes gets a little vague, but I am inclined to be flexible. I would like to know as much as I can about these interviews. I think it is quite important to the case.

Objection is overruled. Proceed.

A. (Continuing) He explained to me that in the last plant and other plants, they had been unionized, and his opinion was that the unionized plant would run better, and he had known of plants that hadn't been able to run until they were unionized. In answer to that, I asked him how would this solve this problem here today, this unknown group of malcontents. He said there was no solution for this problem, but that in his opinion, he thought a union-run plant would operate better than a nonunion plant, based on his experience.

Q. (By Mr. Marvin Martin) Was there also any discussion with him concerning the difference in the number of personnel, and so forth, in the refinery as opposed to what he had here? A. Yes, sir. He indicated in other plants there had been more people, and I told him that I realized we had been short, but I hadn't realized until I talked to him the specific areas where we needed more people to make the plant run better.

Q. His job that he holds now, was it even in existence back in June, July and August? A. No, sir.

TRIAL EXAMINER: What is his job, junior operator?

547 THE WITNESS: He is assistant manager of operations.

Q. (By Mr. Marvin Martin) Where does he fall between Mr. Tyler and the senior operators? A. It is under Mr. Tyler over all the senior operators.

Q. Now, following these interviews that you had, in addition to the discharges and the matter you spoke of of relieving Mr. Owens, what other actions, if any, did you take concerning the problem there at the plant? A. We interviewed and hired over — starting then and continually, our plant personnel then was 25. To date, it is approximately 38. We set up a training program to upgrade people so that continually we are training senior operators. To break out a junior operator to be a competent senior operator, to break out on the board it takes a period of training under the training head of a senior operator. This is one of the duties Mr. Harms has been in charge of. We added more personnel people and this upgrade training went on.

Q. What about equipment? Did you add any equipment? A. Yes, sir. We added additional equipment to the plant, additional buildings. I added another boiler.

Q. Give us some idea of the dollar amount.

TRIAL EXAMINER: What difference does it make. I am sure it cost money.

Q. (By Mr. Marvin Martin) What about some of your management people, Mr. Stiff or Mr. Tyler? Did you make any change there?

548 A. Yes, I made Mr. Tyler manager of engineering and operations, and Mr. Stiff manager of maintenance.

* * * * *

CROSS EXAMINATION

Q. (By Mr. DeProspero) Have any of your companies you mentioned on your direct examination ever been organized for the purpose of collective bargaining? A. No, sir.

Q. And how long have you been in business, 10 or 15 years? A. Twelve and a half or thirteen years.

Q. You never had to recognize a union or to bargain with a union? A. No.

* * * * *

551 Q. (By Mr. DeProspero) Now, at the time you discharged the six employees, you had no definite proof that any one of them had composed, or written, or mailed any of the anonymous letters, isn't that correct? A. That is correct.

* * * * *

Q. Now, I believe you testified that you suspected or believed that two or three employees possibly on the night shift had written or composed and mailed the letters. Is that your testimony? A. No.

552 Q. Do you recall on direct examination you testified that the anonymous letters had to be written on the night shift by two or three employees, one of two or three employees? A. Yes, sir.

Q. So that narrowed it down to whom? To what employees were you referring? Were those employees on the night shift Russ Sims, Thomas Garrett and Wakulich? A. There was no way to isolate which on the night shift, as you speak of, except in the letter, letter No. 2. The letters one and three were mailed, and even though they were post-dated, they could have been written at an earlier date. The date they were mailed wouldn't necessarily mean when they were prepared.

* * * * *

553 Q. (By Mr. DeProspero) Did you personally select the employees to be discharged? A. Yes, sir.

Q. Was this the first time in the operation of K.R.H. that you personally selected employees for discharge? A. Yes, sir.

Q. Is it true your supervisors out there had been the ones who had discharged employees prior to September 20th? A. Yes, sir.

Q. Did any of your supervisors, Mr. Tyler, Mr. Klein, on or about September 20th, recommend the discharge of any of these six employees? A. No, sir.

* * * * *

554 Q. (By Mr. DeProspero) In your interviews, beginning September 13th through the 19th, did you also ask employees who was talking about the union? A. Yes, sir.

Q. Did you ask these employees in the interviews where they had gotten their union cards they had signed? A. Yes, sir.

* * * * *

556 Q. (By Mr. DeProspero) Was Thomas Garrett one of the employees that you interviewed on or about September 13th? A. Yes, sir.

Q. Did you ask him if he had signed a card for the union?
A. Yes, sir.

Q. Did he tell you that he had? A. Yes, sir.

Q. Now, isn't it a fact, Mr. Angle, that you showed employees these anonymous letters in the interview? A. Yes, sir.

Q. Did you post on the bulletin board any of the anonymous letters? A. The second letter that was received.

* * * * *

558 Q. (By Mr. DeProspero) Wasn't your plant, in fact, operating very efficiently and very normally during this period, prior to the discharge? A. It was operating for the first time at about three-fourths of the capabilities as the construction contract called for.

Q. I understand that, but my question was, was not the plant operating efficiently and normally at that time prior to the discharge?
A. Well, no, —

TRIAL EXAMINER (interrupting): Excuse me. Had it gone up to 75 percent efficiency or down to 75?

THE WITNESS: Up to and —

TRIAL EXAMINER (interrupting): That is all I want to know.

* * * * *

559 Q. (By Mr. DeProspero) There was no question about the work efficiency or work ability of any of these discharged employees, was there? Can you answer that yes or no? A. No, sir, I can't.

TRIAL EXAMINER: You can't answer the question?

THE WITNESS: Well, in some individual cases by minor degree their performance could have been better. They had received raises. Their performance was such — their performance was not the basis for their discharge.

Q. (By Mr. DeProspero) As I understand your testimony, the basis of their discharge was the suspicion that one or more of the six were engaged in writing these anonymous letters? A. Yes, sir.

Q. And is it further your testimony that you had no absolute knowledge or no proof that any one of the group was responsible other than your belief or suspicion? A. Yes, sir.

Q. Did you discharge the six employees because they were for the union? A. No, sir.

* * * * *

561 CROSS EXAMINATION

* * * * *

Q. (By Mr. Kelly) You hadn't had any association at all in your business with unions, had you, sir? A. No, sir.

Q. You had no experience in that connection? A. No, sir.

Q. And had had no experience in the plant operation in connection with it? A. No, sir.

* * * * *

562 Q. (By Mr. Kelly) You knew, of course, that there had been cards signed by a great number of employees, did you not? A. One employee mentioned all but one employee had signed cards.

Q. Some employee whose judgment you respected? A. It was the only, Mr. Ham told Mr. Klein that all employees but one, and named the one, had signed cards.

TRIAL EXAMINER: Can you fix a date for that conversation?

THE WITNESS: Yes, sir. July, in the latter part of July, July 26, 27, 28.

* * * * *

563 Q. (By Mr. Kelly) Did each of these six mention to you their desire to have a policy with respect to retirement or other benefits of the company? A. I believe each of these six mentioned that they wanted to have a written policy.

564 Q. Did they mention specifically they wanted a contract with you, Mr. Angle? A. None of them.

Q. All right, they wanted the policy spelled out in writing, is that correct? A. Yes.

* * * * *

567 Q. (By Mr. Kelly) Now, as it would relate to your termination letter, also, Mr. Angle, you said, in fact, you admit to the point "you do not want to take orders from me or anyone else who works for me." Now, I want you to tell the Examiner any of those six men who ever refused to take orders from you or anyone who works for you.

TRIAL EXAMINER: Can you remember?

A. I have the recollection that this situation existed between Mr. Owens and Mr. Sims.

Q. (By Mr. Kelly) All right. This identical letter was given to all six employees, was it not? A. Yes, it's a general letter.

Q. It's identical? A. It's identical.

Q. Did I understand you to say, then, that at least the other five employees were not terminated for any refusal to obey orders with anybody with the company, is that correct? A. I can't recall any particular incident.

568 Q. You also said, "I feel in your mind you believe that you are absolutely justified in not cooperating with me or my other employees, as far as fitting into this group or getting along with others." Now, Mr. Angle, which of these gentlemen fit that phrase? A. All six of them, because the mal— tension and the people, lack of team work within the whole connection of all the employees at the plant was such that they were not getting along.

Q. As it would relate to the operation of a given shift, sir, their duties, junior operators-senior operators, those gentlemen were co-operating, were they not? A. I believe so.

* * * * *

570 Q. (By Mr. Kelly) What was the substance of your speech, and the purpose of it? None of us heard it.

* * * * *

A. There was no speech. At the conclusion of our dinner, one of the employees from the K.R.H. plant stood up and made a short, brief "thank you" and then related that the maintenance personnel in the plant did all the harder work effort then the operating crew, which later was described to me as a jest. The only reason I stood up to speak at all was in answer to, "Thank you for the dinner," and the essence of my speech this was the first time I had ever, I and my family, had ever been together with the group of K.R.H. employees. Some of my, one of my drilling superintendents was there, some of my geologists, and I knew a great number of them had never seen any of us.

I told them that, I referred to the letter that I had mailed to them on July 11, which covered my, all of my other employees, and told them that it was all one company; we all worked for each other, and I worked

for them, and I wanted them to get acquainted with our other, with the other personnel of my company.

My drilling superintendent stood up and said that he had worked for me for twelve or thirteen years. All of our, all of the personnel

571 had gotten along like one happy family, and —

* * * * *

573 TRIAL EXAMINER: The hearing will be in order.

Do you have a stipulation?

MR. MARVIN MARTIN: Yes, I do. The parties stipulate that Mr. Hugh Harring is qualified as an expert in the examination and identification of typewritten documents, and it would be his testimony that Respondent's Exhibits 9 and 10-A were typed on the typewriter located at the Kansas Refined Helium Company, and Respondent's Exhibit 11

574 was not typed on that plant typewriter.

TRIAL EXAMINER: So stipulated, gentlemen.

MR. WACKNOV: So stipulated.

* * * * *

582 Room 1020
Sedgwick Courthouse
Wichita, Kansas
Wednesday, August 9, 1967.

* * * * *

584 TRIAL EXAMINER GOLDBERG: Gentlemen, the hearing will be in order.

This proceeding is being reconvened from the January 20, 1967 hearing, pursuant to Order dated August 1, 1967, in Case Nos. 17-CA-3021 and 17-CA-3021-2, entitled George A. Angle, doing business as Kansas Refined Helium Company.

* * * * *

586 TRIAL EXAMINER: Now, gentlemen, the Respondent has filed a motion that the hearing be reopened for the taking of additional evidence relative to the issue of whether the unit alleged in the complaint is an appropriate one for the purpose of collective bargaining and that

the critical point involved here was that at the time of the original hearing the outstanding decision and direction of election precluded any litigation of that particular question and, although Mr. Martin, I believe, through his understanding of the situation, didn't make any direct effort to meet the question, I feel quite sure that he realized that it would have been refused at that time. I have no doubt about it in my mind.

With the action of the Regional Director in setting aside the proceedings in the representation case, which I don't pretend to be able to understand, it becomes an open question and the Respondent is entitled to deny what he would have been entitled to deny at the beginning of the original hearing had there been no outstanding decision and direction of the election.

Now, because the hearing was reopened for that purpose, the Respondent, also, becomes entitled to show any change of circumstances, as if this were still the original hearing. It is unfortunate from the

587 procedural point of view on your side. It may be an unfortunate concommitant of the action of the Regional Director in setting aside his own direction of election but that's the way the thing happened and due process to the Respondent, in my opinion, requires that he be given an opportunity to show:

One, whether the unit alleged was appropriate for collective bargaining purposes at the time of the demand and, two, whether there are any changed circumstances at this time which make that unit not appropriate for that purpose.

* * * * *

603 Whereupon,

ROY R. KRUGER

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

604 DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Would you state your name, please? A. Roy R. Kruger.

TRIAL EXAMINER: Would you be good enough to spell the name?

THE WITNESS: K-r-u-g-e-r.

TRIAL EXAMINER: Proceed.

MR. MARVIN MARTIN: May I have just one moment, Your Honor?

Q. (By Mr. Marvin Martin) Did you give the reporter your address? A. 310 South Main, Russell, Kansas.

Q. By whom are you employed? A. George A. Angle, Frontier Oil Company.

Q. When did you first go to work for Mr. Angle? A. I have worked for Mr. Angle ten years.

Q. What is your basic occupation? A. I'm a petroleum geologist and production superintendent concerned with the production of oil and gas wells.

Q. To whom do you report, Mr. Kruger? A. I report to Mr. Angle.

Q. Now, are you acquainted with the various other trade name companies that Mr. Angle has?

TRIAL EXAMINER: There's no question about this.

Q. (By Mr. Marvin Martin) Do you have any responsibility concerning the Great Plains Drilling Company?

605 A. I take care of Great Plains Drilling Company.

Q. What do you mean you take care of it? A. Well, it consists of two cable tool units and four men and they work directly for me.

Q. Will you explain what a cable tool unit is? A. A cable tool unit is a percussion-type drilling rig that follows the rotary. In Kansas we use the cable tool unit to complete the wells. It's done originally with the rotary, casing set and the cable tool unit is moved in at the completion phase of the gas or oil well.

Q. Mr. Kruger, if you can slow down so she'll be sure to get all my question before you answer.

What is the name of the rotary drilling unit or division used by George Angle? A. Red Tiger Drilling Company.

Q. Will you explain what the difference is, just basically, between a rotary and a cable tool unit? A. A rotary drill drills by a circular motion; the rotary circulates, drilling mud from the top down, picks up the samples, brings them down, lays them in a pit. It's a rotary type drilling operation, just like an auger.

TRIAL EXAMINER: It works just like any auger would in the old —

THE WITNESS (interrupting): With the exception that it circulates the formation up; it turns and breaks the formation up, it doesn't
606 screw into the ground like an auger but a lot of the principle is the same.

TRIAL EXAMINER: I think that's probably enough. It's the original drilling that goes into the earth, is that right?

THE WITNESS: Right.

Q. (By Mr. Marvin Martin) Now, following the rotary operation? A. Following the rotary operation, if the test was successful, casing is set and cemented in the hole, allowed to set a day or two and, then, a cable tool unit is moved in and we proceed from there. We run electric logs, perforate, shoot holes in the pipe, innumerable things.

TRIAL EXAMINER: Does the original rotary drill go down to either the gas or the oil or does it stop short?

THE WITNESS: It goes down to and on past, below, down and below.

TRIAL EXAMINER: All right.

Let's keep it general because I'm sure this industry is intensely complicated. I have no knowledge on the subject and, frankly, the people who review whatever I do will have no more; they will be lawyers

like I am and so we will have to dilute it to our understanding. Go ahead.

Q. (By Mr. Marvin Martin) You say you bring a cable tool on next. Will you explain how many cable tools you have with your company and Great Plains? A. We have two cable tool units.

607 Q. How many employees or personnel are there on each of those two cable tools? A. On each of our cable tool units, since they run daylights only, I have two employees.

Q. Why don't you name those people for us. A. Well, on Rig 1 Cable Tool I have Leo Baum and his tool dresser is George Carnn; the other cable tool unit has as the driller Elmer Snyder.

Q. What is his tool dresser's name? A. His tool dresser's name is Leroy Braun.

TRIAL EXAMINER: Are you speaking, Mr. Kruger, as of today?

THE WITNESS: Yes.

Q. (By Mr. Marvin Martin) Have you had a change in the personnel of those rigs since this time last year? A. I hired Leo Baum; I don't have the exact dates. I may have hired him a year from today. He's been with me almost a year but I don't remember just exactly how long he's been there. I hired Leo Baum and George Carnn.

Q. What about the other rig or unit? A. Elmer Snyder has been working for me almost, approximately eight years.

Q. What about his tool dresser? A. His tool dresser has only been there six or seven, maybe five months. I don't know; he's a recent employee. We recently employed him.

608 TRIAL EXAMINER: Mr. Kruger, you've recently hired a man to do the work that was formerly done?

THE WITNESS: That's right.

Q. (By Mr. Marvin Martin) Is there any difference in the manner in which the equipment is used and the operations performed since this time last year? A. Significant change in the manner of the use of the cable tools?

Q. Yes. Are you using, in fact, the same rigs? A. Yes, the same rigs; everything's the same.

Q. Will you explain, briefly, what those drillers and tool dressers on a cable tool rig do? A. Well, the driller is in charge of the rig. He runs the controls and the tool dresser simply is his helper.

TRIAL EXAMINER: Mr. Kruger, what does the cable tool do? There is some sort of derrick or tower over the hole, isn't there?

THE WITNESS: Yes, when the rotary is finished, you have casing in the ground and we've set through these different zones; they're scattered at maybe 30 to 40 feet intervals from approximately 3,400 to 3,600 in that area.

TRIAL EXAMINER: Feet?

THE WITNESS: Right; we may have gas zones from 3,000 feet to 3,600 feet. They're behind the casing. Between us and the gas we

609 have casing and cement. The cable tool rig is a smaller unit than the rotary that moves in; it puts up a little tower and provides us a basis to run in logging equipment, perforating equipment; the cable tool pumps water out of the hole, if we get in it, or oil. It's just a smaller operation but it is the final —

TRIAL EXAMINER: Essentially, it's a derrick and a cable that can carry things up and down?

THE WITNESS: That's right.

TRIAL EXAMINER: This piped hole, when you say casing, that's a metal pipe with perhaps some concrete behind it?

THE WITNESS: The cable tool, we're getting into — like to go from zone to zone, for instance, between each zone, we isolate that with a drillable, cast iron plug; then, the cable tool unit goes in and by percussion, with a bit on the bottom, when we are ready to go back to that zone below it drives this plug to the bottom and we go through the whole procedure again. There are innumerable things that the cable tool does.

TRIAL EXAMINER: I think I understand its flexibility and versatility and I take it that that is what you want me to do?

THE WITNESS: Right.

TRIAL EXAMINER: Go ahead, Mr. Martin.

MR. MARVIN MARTIN: All right.

TRIAL EXAMINER: Do these two men do all these operations with a cable tool? Do they operate the cable tool, or does somebody
610 else come in?

THE WITNESS: When we get ready to log, we hire logging companies, Lumber Jay, Great Guns, any logging company. They come in, they run an electric log, they interpret it —

TRIAL EXAMINER (interrupting): What is a log? I've heard the expression. I think I'm beginning to understand from some of the other descriptions what you do, but you might explain it to me.

THE WITNESS: The log, the type logs we use in a casing it is called a neutron log. Now, the physics of how it works, I'm not qualified to tell you.

TRIAL EXAMINER: Take it easy on physics.

THE WITNESS: In general, a log picks the limes, shales and sands out behind the casings and it also will tell how much porosity is in each lime or sand and then the geologist who has originally sat on the well, which a good share of the time is myself, I compare all my information against the log; the log is the final word, by the way. I compare my information against the log and then we proceed to complete the well.

TRIAL EXAMINER: And do you do that by drilling holes?

THE WITNESS: We do that by shooting holes.

TRIAL EXAMINER: Shooting the holes through the casing, that is, horizontal, if the casing is vertical?

THE WITNESS: Right.

TRIAL EXAMINER: In other words, you tap whatever level you
611 want to?

THE WITNESS: That's right.

TRIAL EXAMINER: Then, these men who run the cable tool are simply like elevator operators. They hoist anything up and down that they're told to?

THE WITNESS: That's right, and I want to add to that.

A lot of the time I cannot be there so my particular cable tool operators do do something that most of them don't. They may pick a number of zones on a log ahead of time that I know we're going to want to perforate and if I'm not there, they will, they will do it if I'm not there to do it, supervise the logging company, the perforating company, they do it.

TRIAL EXAMINER: You mean after the logging company gives you its report you also have perforating companies to shoot those holes?

THE WITNESS: It's the same thing.

TRIAL EXAMINER: Oh, the logging company does the other also?

THE WITNESS: Yes.

TRIAL EXAMINER: All right.

Q. (By Mr. Marvin Martin) Who moves this equipment such as you have just described here, such as the rotary rig and the cable tool rig, from one location to another? A. Red Tiger Trucking Company.

TRIAL EXAMINER: What do you mean by a rig? Does that mean
612 all the tools required?

THE WITNESS: By rig I thought you meant both rotary and cable tool, anything, didn't you?

Q. (By Mr. Marvin Martin) Let me ask it this way. Who moves the rotary rigs, cable tool rigs and all the equipment utilized by both the Great Plains Drilling Company and the Red Tiger Drilling Company? A. Red Tiger Trucking Company.

* * * * *

613 Q. (By Mr. Marvin Martin) At the time you hired — let me put it this way. Have you hired any people in the Great Plains Drilling Company's operation? A. I hired Elmer Snyder; well, I hired Leo Baum. I hired the drillers some years ago; the driller hires his own help. I hired the driller who hired Elmer Snyder around eight years ago.

Q. At the time you hired Mr. Baum would you tell us what your conversation with him was?

* * * * *

A. I believe our conversation at the time, he was working for, I don't remember for sure the name of the company, but anyway, I wanted another driller and had a problem hiring drillers. The problem is to

614 keep them busy every day and their tool dressers. We try to have work for everyone every day, so my conversation with him at the time was that if he would leave the company he was with and come to work for us, we would guarantee that we would keep him busy.

TRIAL EXAMINER: Mr. Wacknov, let him finish. He's finished. Do you have something now?

MR. WACKNOV: No, not at this time.

THE WITNESS: I agreed to keep him busy every day.

TRIAL EXAMINER: Is he paid by the day?

THE WITNESS: He's paid by the hour.

Q. (By Mr. Marvin Martin) Since that time, has he been kept busy? A. He's been kept busy, yes.

Q. Has it all been with the Great Plains Drilling Company cable tool rig that he has been kept busy on? A. No.

Q. Where else has he worked? A. He's worked on Red Tiger trucks when they need extra help; he's also helped at the plant.

Q. At the plant, do you mean Kansas Refined Helium? A. I mean Kansas Refined Helium, yes.

Q. What type of work has this man done at the plant? A. I haven't supervised his work down there. I don't know exactly what he has done down there.

TRIAL EXAMINER: Then, you can't say?

615 THE WITNESS: That's right.

Q. (By Mr. Marvin Martin) How do you handle a transfer on this temporary basis? How does that work? A. On this temporary basis I would say, well, ordinarily, I can see a slow period coming ahead of time and I check with Claude Branch or with John Stiff.

TRIAL EXAMINER: What is it? Granch?

THE WITNESS: Branch.

TRIAL EXAMINER: I don't remember the name there. What does he do there?

THE WITNESS: Well, he's a truck pusher for Red Tiger. I check with them and make arrangements for any of these people to work for them.

TRIAL EXAMINER: You check around at the other enterprises to see if they need somebody?

THE WITNESS: That's right.

Q. (By Mr. Marvin Martin) They then go to one of these other enterprises such as Kansas Refined Helium or Red Tiger or whatever it might be; they work under the supervision of whoever that supervisor might be, is that right? A. That's right.

Q. This total gas production and refining takes place where, Mr. Kruger? A. The total gas production takes place within 20 miles, in a trend north and northwest of the helium plant. The refining is done at the plant site.

616 TRIAL EXAMINER: What do you mean? You're talking about the gathering of the gas from which helium is extracted?

MR. MARVIN MARTIN: Yes, Your Honor.

TRIAL EXAMINER: Or are you talking about Angle's enterprises, generally?

MR. MARVIN MARTIN: We're talking about the gathering of the gas from which the helium is extracted.

TRIAL EXAMINER: It's my understanding that that was purchased from other oil companies, isn't that so?

MR. MARVIN MARTIN: I think that is partially so, Your Honor. I believe that is one of the changes; I believe there has been a significant additional purchase since the time of the hearing.

TRIAL EXAMINER: Mr. Kruger, does Frontier Oil produce any?

THE WITNESS: We produced, up until just the very last few months, we produced all of our own feed gas and it all came from our own wells.

TRIAL EXAMINER: All the gas going to Kansas Refined Helium came from Frontier Oil wells?

THE WITNESS: Frontier gas wells.

TRIAL EXAMINER: All right. Go ahead, Mr. Martin.

Q. (By Mr. Marvin Martin) Where are those gas wells located that are owned by George Angle, doing business as Frontier Oil?

A. They're located on a trend to the northwest of the plant, roughly,

617 a 20-mile trend.

Q. Do you know how many of those wells —

TRIAL EXAMINER (interrupting): Excuse me. Is the word trend a geological term?

THE WITNESS: Yes.

Q. (By Mr. Marvin Martin) Do you know approximately how many of those gas wells there are that feed into the plant? A. There are approximately 50 wells.

Q. Do you have, or explain, briefly, how you gather that gas.

A. Well, the gas wells are hooked to —

MR. WACKNOV (interrupting): Mr. Trial Examiner?

TRIAL EXAMINER: Yes?

MR. WACKNOV: I believe that the witness said up until recently this has been the case but this isn't the case now.

TRIAL EXAMINER: Isn't that cross examination?

MR. WACKNOV: Well --

TRIAL EXAMINER (interrupting): If you want to explore it, make a note of it. You can question it on cross examination. I noticed that, too.

MR. WACKNOV: I was just wanting to get at what point of time this question was directed to.

TRIAL EXAMINER: I'm sure you heard it as I did, Mr. Wacknov. Make your notes. Go ahead.

Q. (By Mr. Marvin Martin) Will you explain how your gathering system works from the Frontier wells into the plant; just describe it.

618 A. Well, the gas comes out of each well and it goes into a pipe that is buried in the ground. This is called the gathering system. These pipes in general are 4 inches in diameter and as they join a larger common trunk, the diameter of the pipe naturally gets larger.

TRIAL EXAMINER: Mr. Martin, that I can understand.

A. (Continuing) And finally, we arrive at the plant with this feed gas; it has come from our wells through out pipeline to the helium plant.

Q. (By Mr. Marvin Martin) Now, who owns the gathering system? A. Frontier Oil Company.

Q. Who owns the gas wells? A. Frontier Oil Company.

Q. These are both George Angle, doing business as, is that right? A. That's right.

Q. Who do you have working on the pipeline portion of the system? A. On the pipeline portion, we have Alan Pesicka.

Q. Would you spell that? A. It's P-e-s-i-c-k-a.

MR. WACKNOV: I object, Mr. Trial Examiner, at this point. I believe Mr. Martin has qualified this witness as a supervisor over certain rotary rigs and I don't believe he's stated his connection with any of the other operations.

619 TRIAL EXAMINER: Now, Mr. Wacknov, this man has been with Mr. Angle, I think, for about ten years. He is a geologist. He has

checked around to find work for his surplus men. I have an idea he has a pretty good knowledge of the area and if you know anything to the contrary, of course, you'll go into it but I wouldn't trouble myself with a few names. If this man knows them, let him state it. This isn't a matter for establishment of expert knowledge.

All right. The objection is overruled. We have Mr. Pesicka, or whatever it is.

Q. (By Mr. Marvin Martin) I had asked if you knew how to spell his name, Mr. Kruger? A. P-e-s-i-c-k-a.

TRIAL EXAMINER: What does he do?

THE WITNESS: He's in charge, his primary function is he's in charge of our pipeline gathering system and the day-to-day production of approximately 50 gas wells.

TRIAL EXAMINER: He does all of that, watches the system and —

THE WITNESS (interrupting): He has two assistants; I didn't get to those yet.

TRIAL EXAMINER: How many miles of pipe are there?

THE WITNESS: Approximately, a shot-gun figure would be 45 miles.

TRIAL EXAMINER: It seems low.

620 THE WITNESS: It may be. Go ahead, Mr. Martin.

Q. (By Mr. Marvin Martin) Who are the other two men that you spoke of? A. The other two assistants are John Young and Bob Mootz.

Q. Do you know from whom Al Pesicka receives his pay check? A. That is from, I think — I don't know.

Q. Do you know from whom the other two assistants receive their pay checks?

TRIAL EXAMINER: Mr. Martin, you have, I think, Mr. Klein, who is the controller, and if you want any of that material, I think you'll be able to get it all from him. I have little doubt that somebody other than a field man, like Mr. Kruger is, would be the proper witness.

Mr. Kruger, who lays these lines when you bring in a new gas well and you need some new pipe?

THE WITNESS: When we bring in a new gas well, we hire a contractor to lay the line and Mr. Pesicka, along with his two assistants, do hire some of the connection work as well as actually doing some of the work. They do a good amount of the connection work from the pipeline to the well but we hire the laying of the line itself; that's by contractor.

TRIAL EXAMINER: That would be from the well to the system?

THE WITNESS: Right.

TRIAL EXAMINER: Who watches it and inspects it?

THE WITNESS: Mr. Pesicka and his two assistants, each of
621 whom has a vehicle and in a day they check every gas well every day.

TRIAL EXAMINER: On all the lines?

THE WITNESS: They do not drive the line, no.

TRIAL EXAMINER: Do you have some other system?

THE WITNESS: Well, we'd know by pressure drop if we had a leak.

TRIAL EXAMINER: I can understand that.

Q. (By Mr. Marvin Martin) Where did Mr. Pesicka work before he began working with the gathering system? A. He was a cable tool driller.

Q. Do the cable tool people with Great Plains, do they work with Pesicka and his group at the time each of these wells are put up? A. There again, it depends.

Q. Well, explain to us what they do. A. Well, —

TRIAL EXAMINER (interrupting): Do we need it? I have no doubt that the man who is going to supervise the gathering of the gas has something to do with the people who drill the wells because he takes up where the others leave off, so I have little doubt that there

is some relationship between them, but you don't have to belabor the point, but go ahead.

THE WITNESS: If they have time, it just depends upon whether I think it is more important for them to stay there and help hook up
622 the well or whether it is more important for them to be off on another well. It's just a matter of personal instruction.

TRIAL EXAMINER: Someone will tell them, you or someone else?

THE WITNESS: I or someone else, yes.

Q. (By Mr. Marvin Martin) Do you have these people who are with Great Plains Drilling Company, when you need work for them, is that ever with the pipeline system? A. Not with the system itself except to help hook up wells.

Q. I see. Can you briefly tell us the type of problem which the men there in the fields on the pipe system might have. In other words, what is he looking for when he's driving up and down? What is his job?

MR. WACKNOV: I object to this.

TRIAL EXAMINER: Overruled. I can see the possible relevance.

A. His job could be to find a particular, a loss in production in a well and his next stop would be to try to figure out why that well has lost production and if it is something he can solve on the spot, then, he will proceed and solve it.

TRIAL EXAMINER: Now, these are the three men under Mr. Pesicka; it's his group. They actually work with their hands if necessary?

THE WITNESS: If necessary, yes, and, if necessary, every day
623 at some place, I would assume.

TRIAL EXAMINER: Proceed, Mr. Martin.

Q. (By Mr. Marvin Martin) Mr. Kruger, where do you keep your records and so forth for this gas production out in the field?
A. I keep all the records on the gas wells at the plant.

Q. And —

TRIAL EXAMINER (interrupting): Which plant?

THE WITNESS: Kansas Refined Helium plant.

Q. (By Mr. Marvin Martin) Do you have occasion to be in and around the plant yourself? A. I'm around the plant four to five times a week.

Q. And do you utilize the services of the plant people yourself?
A. Sir?

Q. Do you know Mr. Leon Myers? A. Yes, sir.

Q. Does Mr. Myers, what type of work, if any, does he do for you? A. He makes telephone calls and orders equipment for us, something along this line.

We, also, I might add, we have our yard where we keep all of our inventory within 200 yards of the plant to the east, which is another reason we're down there.

TRIAL EXAMINER: What is your inventory, rigs?

THE WITNESS: No.

624 TRIAL EXAMINER: Pipe?

THE WITNESS: It would be pipes, tubular rigs, tanks, anything like that.

TRIAL EXAMINER: As I recall, you have some five to six acres out there, don't you?

THE WITNESS: Yes.

Q. (By Mr. Marvin Martin) What other divisions or groups use that acreage there besides Kansas Refined Helium Company?
A. Well, it would be Red Tiger, Great Plains.

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CROSS EXAMINATION

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625 Q. (By Mr. Wacknov) Now, does Great Plains Drilling Company drill for any other company other than any of Mr. Angle's enterprises? A. I don't think we have within the last two years and prior to that it wouldn't amount to over 2 percent of our total work for anyone else and that is just once in a while we would do a contract for someone else, but to my knowledge, within the last — I don't think we've done any contracts that I can put my finger on within the last two years.

626 Q. Mr. Kruger, do you have any books and records which would show — A. (Interrupting) No, I don't keep a daily, personal diary or anything like that.

Q. Well, who would have access to these records? A. Our office.

Q. And who would that be? A. I would say any of the girls up there could check it for you.

Q. It would be in Wichita? A. Frontier Oil Company's office, yes.

Q. It would not then be at the K.R.H. plant, would it? A. That record would not be.

Q. What records do you keep at the K.R.H. plant? A. Now, wait a minute. I could get it for you from the K.R.H. plant but it would be —

Q. (Interrupting) Well, what records would you be speaking of? A. This would be a daily report of completion of the gas well. I make, I put it on paper that makes a copy; I mail one copy to Wichita. I keep one copy for myself at the K.R.H. plant. I could get it for you. I don't keep it in order. The idea is not to keep it in order for the service company. It's for Frontier's, Frontier Oil Company's records.

TRIAL EXAMINER: Are you saying you use the K.R.H. plant as a field office?

627 THE WITNESS: I do, yes.

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634 TRIAL EXAMINER: Now, you're purchasing something else. You call it crude helium?

THE WITNESS: That is right.

TRIAL EXAMINER: Does that come in containers or does it come in through another pipeline?

THE WITNESS: It comes through another pipeline.

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635 Q. (By Mr. Wacknov) All right. Mr. Kruger, where does this crude helium come from? A. It comes from the government helium plant at Otis. It comes from a pipeline. I don't know exactly where it comes from. It may come from there or it may come from other plants up and down but our pipeline, referring to the government helium plant at Otis —

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636 Q. (Interrupting) Would you say that the company, K.R.H., is it now refining the crude helium that comes through the government helium pipeline? A. Yes.

Q. Is it refining any of its own gas that comes from its various wells surrounding the plant? A. Yes.

Q. There is still some gas coming in from its own wells? A. The majority of it still comes from our own feed wells, yes.

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638 Q. (By Mr. Wacknov) I see; and you are in charge, then, of maintaining oil wells? A. Oil production and gas production.

Q. And where are these wells located, these oil wells? A. All of the oil wells are located in Ellis and Rush Counties.

Q. But where does the end product go in regard to the gas and oil wells you're connected with? A. Well, on the oil wells, it depends on who the purchaser is and the location and it's sold at the lease to the purchaser of the tank battery.

Q. It's not used in the K.R.H. operation? A. The oil is not.

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639 Q. (By Mr. Wacknov) Now, what do your employees do, the employees who work on the two rigs under you. What do they do when they're not completing wells? A. When they're not completing wells, they help Red Tiger Trucking Company as additional help on our trucks. They work at the Otis — at our K.R.H. Helium plant.

Q. Are you in charge of their payroll records? A. No, sir.

Q. Do you keep their time? A. No, sir.

Q. Do you know how much time they work for a particular company? A. No, sir. I just know that they work every day some place.

Q. Well, you stated every day — A. (Interrupting) Sundays they don't work, but if they want to work some Sundays, they can work every day.

Q. Did you state that you look around for places for them to work if they aren't busy? A. To this extent, I ask who needs help. I don't make work. In other words, in this big of an organization there's always someone who needs extra help.

640 Q. Wouldn't you know whether your own men were working or where they were working? A. Sir?

Q. Would you not know where your own men were working? A. I would know where they were working, yes.

Q. All right. How much of the time do they go to work at the K.R.H. plant in order to keep busy in Otis, Kansas? A. I don't know a percentage. I can't give you anything.

Q. Approximately? A. In the last three weeks, 100 percent. In the last year, I don't know.

Q. Now, in the last three weeks they've been working for the K.R.H. plant 100 percent? A. That's right. Let me back off; I'm sorry. I would say 90 percent and 10 percent — I'm getting into percentages that I can't back up, but most of the time in the last — I haven't had them on cable tools for the last three weeks, so they have either been at the plant or working for Red Tiger.

Q. They have been where? A. They have either been at the plant or working for Red Tiger.

Q. And what is your best estimate again as to how much they would be working at the plant and how much on Red Tiger? A. It's an estimate, 90 and 10.

Q. Is that 90 percent at the K.R.H. plant?

641 A. Right. A rough estimate.

Q. Pardon? A. A rough estimate.

Q. Now, when did this begin that your men under you would work at the K.R.H. plant? A. Well, just let me put it this way. It's always been my policy to try to keep everyone busy. It's always been the policy and they have worked at the plant off and on since the plant started, since it was there.

Q. Would you say it's been considerably more since January of this year than it has been prior to January? A. I would say it's been more since January.

Q. Approximately how much more? A. I don't know; I don't know.

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643 Q. (By Mr. Wacknov) When did you start keeping your records at the K.R.H. plant? A. Well, I've kept the records out there ever since they got their offices built, which would be from the time of its inception. I've had records out there since then.

Q. The same records? A. The same records.

Q. And there has been no change in your process of keeping records there from the beginning of the plant operation? A. The only change has been that they are a better set of records because Leon Myers, the man at the plant, more or less takes care of it.

Q. What about a better set of records, sir? Why are they better?

644 A. Well, they are in alphabetical order and all.

Q. Mr. Myers did not take care of them at first? A. No, I did at first.

Q. Did Mr. Myers make purchase orders and make telephone calls for you at first? A. I don't remember. I'm sure he probably has but I don't know.

Q. Even before January 1 of this year? A. Yes, he's always done that for me.

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656 Q. (By Mr. Wacknov) Mr. Kruger, of all the various gas wells surrounding the plant, is the gas from all those wells piped into the K.R.H. plant or is some of the gas piped elsewhere? A. The first 12 wells we drilled do not go to the plant.

Q. Where do they go? A. They're sold to Kansas-Nebraska.

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662 REDIRECT EXAMINATION

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Q. (By Mr. Marvin Martin) Do you know who is installing and hooking up the new compressor that you spoke of as being right outside the Refined Helium plant? A. Kansas Refined Helium, Frontier Oil Company, I don't know what title it goes under, but we're setting in the new compressor.

Q. Do you check that or are you involved in that in any way?

663 A. I'm involved in it, not intimately involved in that Al Pesicka has really been more or less taking care of it. I've been there every day to see how it's going along.

Q. Does Al Pesicka — A. (Interrupting) We'll be more involved with it once it starts to run.

TRIAL EXAMINER: Wait a minute. Let's get it straight, as long as you asked him the question. This compressor, I take it, stands on some kind of foundation, does it not?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Who laid that foundation?

THE WITNESS: We hired that foundation.

TRIAL EXAMINER: Now, the compressor, the piece of machinery, did you have it or did you buy it?

THE WITNESS: We bought it.

TRIAL EXAMINER: Was it delivered by the seller?

THE WITNESS: No, sir, we delivered it ourselves.

TRIAL EXAMINER: With one of your rigging companies?

THE WITNESS: Yes.

TRIAL EXAMINER: Was it in working condition when it was delivered?

THE WITNESS: I don't know.

TRIAL EXAMINER: Did pipes have to be hooked up to it?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Who did the hook-up of the pipes?

664 THE WITNESS: Kansas Refined Helium personnel.

TRIAL EXAMINER: Do you know the names of the people?

THE WITNESS: Yes.

TRIAL EXAMINER: Who did it?

THE WITNESS: I can name some. Jack Durban, D-u-r-b-a-n, all four of my cable tool people have been involved in this.

TRIAL EXAMINER: Do we know who they are?

THE WITNESS: John Stiff is the supervisor in charge of this.

TRIAL EXAMINER: He's a K.R.H. supervisor; I recall that.

THE WITNESS: He's in charge of maintenance.

TRIAL EXAMINER: He's in charge of setting that thing up?

THE WITNESS: I would say that.

TRIAL EXAMINER: All right.

THE WITNESS: Al Pesicka has been there helping. They've even had some operational people who are ordinarily in operations to come over and help, maintenance people —

TRIAL EXAMINER (interrupting): Operational prople where?

THE WITNESS: K.R.H.

TRIAL EXAMINER: What do you mean by operational?

THE WITNESS: I mean the people who ordinarily are concerned not with maintenance or that type of work have been over helping on it.

TRIAL EXAMINER: Do you know the names of any of them?

THE WITNESS: Yes. Let me think. I want to make sure I get

665 the right one. I know they've been there. I can't just pick a name.

TRIAL EXAMINER: Doing what?

THE WITNESS: Helping hook these pipes, et cetera, up to this compressor.

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666 Q. (By Mr. Marvin Martin) Who operates the other compressor you spoke of as being already in existence? A. Al Pesicka, et al., his group.

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668 Whereupon,

ALTHA (JOHN) YOUNG

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Mr. Young, you go by the name of John Young, is that correct? A. Yes.

Q. And what is your address? A. Otis, Kansas.

Q. What is your occupation? A. I work as an assistant on the gas line.

Q. Who is your supervisor? A. Al Pesicka.

Q. And by whom were you originally employed? A. Well, Al Pesicka called me and hired me.

Q. How long ago? A. Approximately two years ago.

Q. And what was that conversation you had with Mr. Pesicka?

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669 A. Well, I was working for another company and he said that, he said did I have a job, was I working steady and I said, not all the time and he said if I came to work for them I would be working steady and I did and ever since then I've been working steady and I haven't been back to the employment office since.

Q. When you went to work for Mr. Pesicka, what kind of work did you do? A. I worked on cable tools.

Q. Now, would that have been the company or division known as Great Plains?

670 A. That's correct.

Q. And you worked for whom on that company? A. Al Pesicka.

Q. And how long did you work there, do you know? A. The first time I worked for him, I was working for Al, and the next time, when I was hired back this last time, about two years ago, I worked for Elmer Snyder.

Q. All right, and how long did you work for Mr. Snyder? A. Up until about, that was two years ago in June; I left him in October, I believe, of '66, I believe.

Q. What did you do in October of '66? A. I went to a place known as the K.R.H., Kansas Refined Helium.

Q. Had you previously worked with the Kansas Refined Helium Company? A. Quite often.

TRIAL EXAMINER: What was that?

THE WITNESS: Quite often, I had.

Q. (By Mr. Marvin Martin) Did you ask for arrangements to be made for a transfer? Did you ask for it or were you transferred? A. Well, we were told if we would like to work at the plant we could put in our applications and go to work over there if they found a place for us.

Q. And do you know how long it was after you made your decision to transfer that you actually accomplished the transfer? A. Approximately a month and a half I would say.

671 Q. Now, what type of work did you do when you were working with Mr. Snyder at Great Plains? A. Tool dressing.

Q. What do you do as a tool dresser? A. You help complete the wells.

Q. Is some of that manual labor? A. Yes. There is manual labor involved in it.

Q. What about when you went to the K.R.H. plant. What did you do there? A. Worked on maintenance.

Q. Would you describe what kind of work that is? A. That's maintaining general work at the plant.

Q. Can you give me an example of the type of work that you do? A. Possibly plumbing today, maybe working on air filters tomorrow, just whatever work there is to be taken care of, changing plugs on the engines, or whatever happens to need to be done.

Q. Had you had any prior experience in a helium plant?
A. Not in a helium plant, no.

Q. Do I understand that you later then left Kansas Refined Helium Company? A. I later left Kansas Refined Helium Company, went back out on the line.

Q. Where are you working now? A. On the lines.

Q. By on the lines, do you mean —

672 A. (Interrupting) I take care of gas wells.

Q. Who do you work for now? A. Frontier Oil.

Q. Who is your supervisor? A. Al Pesicka.

TRIAL EXAMINER: When did you go back to Frontier Oil?

THE WITNESS: I believe it was in March, sir.

TRIAL EXAMINER: This year?

THE WITNESS: Yes.

TRIAL EXAMINER: Go ahead, Mr. Martin.

Q. (By Mr. Marvin Martin) Mr. Young, what kind of a pay check do you get, from what company? A. Kansas Refined Helium.

Q. Where do you get your pay check? A. At the office.

Q. What office? A. Office of Kansas Refined Helium in Otis, Kansas.

TRIAL EXAMINER: When you say you get your check, do you mean you pick up the piece of paper at the plant in Otis, don't you?

THE WITNESS: My envelope at Otis with my check in it.

TRIAL EXAMINER: Does the check read the same now that it did before? What's written on the check?

THE WITNESS: Kansas Refined Helium.

TRIAL EXAMINER: Now, when you work on the gas lines it is
673 still made out by Kansas Refined Helium, even though you don't work at the plant?

THE WITNESS: I help to furnish the gas for the plant.

TRIAL EXAMINER: Don't tell me why. I'm just asking you. When were you last paid?

THE WITNESS: I —

TRIAL EXAMINER (interrupting): The last check you got, a couple of days ago or a week ago?

THE WITNESS: A week ago.

TRIAL EXAMINER: What did that check say?

THE WITNESS: Kansas Refined Helium.

TRIAL EXAMINER: Go ahead, Mr. Martin.

Q. (By Mr. Marvin Martin) Do you recall what your checks used to say when you were with the Great Plains? A. Frontier Oil.

Q. Now that you're working out on the pipeline, Mr. Young, do you have any occasion doing any work back in the plant? A. I haven't right recently but for a while I did go back whenever there was a breakdown or something like, I'd go back or they would ask me to come back and work again at the plant to help get whatever it might be back in order.

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CROSS EXAMINATION

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675 Q. (By Mr. Wacknov) Would you be stationed there on a perma-
nent basis or would it be on a temporary basis? What type of arrange-
676 ment did you have? A. Whenever our rig was down we always went to the plant and worked, or sometimes we would go work on trucks if our rigs were down.

Q. Before October of 1966? A. Before I went to work at the plant steady.

Q. Well, prior to October of 1966, was your rig down very much? A. On occasions, for short spells.

Q. For spells of approximately how long? A. Oh, maybe three or four days or a week, something of that nature.

Q. How often did this occur? A. Well, really, I don't have any way of knowing. Sometime in there between wells we'd have a little lull and we'd go to the plant and work or, like I say, on the trucks.

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678 Q. (By Mr. Wacknov) All right. Now, in particular, what does your job consist of? What do you do? A. Taking care of gas wells; if they need blowing, the gas falls down, they need taking care of. I have to care for them, blow them, blow the drips, take care of the charts, see what is wrong.

Q. Now, does this take up most of your time? A. It pretty well keeps me occupied.

Q. How many wells do you service? A. Approximately 25 or 27. I don't know exactly. I can count them up.

Q. And who works with you? A. Well, there's nobody works with me, just another assistant of Al's; he works on another part of the field doing the same type of work.

Q. Do you each have assigned wells to service? A. I have an area that I take care of.

TRIAL EXAMINER: Will you please tell me what you do when you go to a well. Just describe what you do.

THE WITNESS: Well, the first thing to do is to go look at the

679 chart to make sure —

TRIAL EXAMINER (interrupting): Is there a little house there?

THE WITNESS: Well, we'll call it that, but inside is a meter that registers your line pressure and also registers, that is the line on the main line, and, also, registers the gas that is coming out of the well.

TRIAL EXAMINER: You mean it goes through a meter, the gas goes through a meter?

THE WITNESS: Yes, the gas goes through a meter as it comes from the well and it measures how much is going into the main line.

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TRIAL EXAMINER: You look at those, are there two separate gauges, one for pressure, and one for —

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680 THE WITNESS: That's right. If the well's production is falling, there has to be a reason, say, it's possibly loading up with water and that way you adjust your well onto off and you open your well; they have shut valves on them and you close your well, and you reopen it and blow into the well, or whatever the problem is, the situation, it gets that water off.

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682 Q. (By Mr. Wacknov) Are there any wells that you service where the gas from these wells does not go into the K.R.H. plant but, rather, goes to Kansas-Nebraska? A. Occasionally, I go by some other wells which are Kansas-Nebraska wells which belong to our company; occasionally, I go by to see how the gas pressure is holding up on those wells. In other words, if I were getting three or four inches of gas and it involved one inch, then, I would see my supervisor and ask him what the deal was on it. Has that well fallen off that bad or is there

something wrong with it and leave it up to him to decide what they want to do with it because it is not our well. Other than to check it on that type of thing, our supervisor would tell us what to do.

Q. So, you do approximately the same thing for these Kansas-Nebraska wells that you do for the wells that go to the K.R.H. plant? A. Well, we don't spend the time with the wells. We take care of them and look after them.

TRIAL EXAMINER: Do you ever blow one of those?

THE WITNESS: Pardon?

TRIAL EXAMINER: Do you ever blow out one of those?

THE WITNESS: I haven't done it. Well, when we work on them, see, when we have to go in and work on them because they are our wells, the way it is understood with me, then, I go by and see that they get back

683 on the line that levels out, until they're level on the line again and, then, I might not go back for a week or so.

TRIAL EXAMINER: Who tells you to go in there and work?

THE WITNESS: Well, we just have to take care of them, look after them. Sometimes my supervisor will tell me to drop down by so and so well in a day or so to see how the gas is coming along and see how it is doing.

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684 Q. (By Mr. Wacknov) Now, how much time do you spend each day, Mr. Young, in the plant itself? A. At the present time, I don't spend much time in the plant. I stop in maybe twice a day to see how things, how our gas is coming in, you know, when it comes in in the evening, at 4:00 o'clock in the evening. I generally check to see if our reading sets pretty well to where it should be, ask the boys how the gas feed is and if there is anything wrong.

TRIAL EXAMINER: Is there a meter at the plant entrance?

THE WITNESS: They have meters on their board which I don't operate or have a thing in the world to do with. I just ask them if we're running low on gas.

685 TRIAL EXAMINER: Well, those meters show up on the board. Where do they register from? Is it from the entrance to the plant where the pipeline comes into the plant?

THE WITNESS: Yes. They register from the pressure, the feed gas that is coming into the plant.

TRIAL EXAMINER: There are other meters at the wells?

THE WITNESS: Yes.

TRIAL EXAMINER: All right.

Q. (By Mr. Wacknov) Mr. Young, is it part of your duty to come into the plant every day? A. Is it what?

Q. Is it part of your duty to come into the plant every day? A. Well, it's not really part of my duty. It's part of my job to see how things are holding up; I don't care about their part of the job. It's my part of the job to see that the gas is coming in the way the operators think it should be.

Q. Are you told to report to the plant once a day or twice a day? A. I do not have to report to the plant.

Q. Are there days when you don't go to the plant at all? A. Not too often. I generally stop sometime during the day.

TRIAL EXAMINER: Well, you go on your own time whenever you think you ought to, is that correct?

THE WITNESS: Well, I generally have time in the morning before I go to work. I'll stop in at the plant and visit with some of the

686 boys there and ask how is the gas holding up.

TRIAL EXAMINER: All right. Go ahead, Mr. Wacknov.

Q. (By Mr. Wacknov) Is this in the morning before you go to work? A. Before I go to the field.

Q. Before you go to the field? A. And if we're way off, then, I know there is something wrong some place, you know what I mean. If it had fallen off just a little ways, then, generally, you'll find what it is or if it is up then you'll find what it is.

* * * * *

693 REDIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Mr. Young, are you acquainted with the Breit lease? A. Yes, I am.

Q. Have you had occasion to work on that lease originally? A. I take care of it, yes.

Q. Have you done any work on that lease with the Great Plains cable tool people? A. Well, I helped them run tubing on it and then a group of us together hooked up the gas line to the meter and hooked the well up, in other words.

Q. How long ago was that?

694 A. Oh, it's not been too long ago, a month or so ago; I don't remember exactly how long ago.

Q. Do you in your work now with the pipeline also continue to work from time to time with the Great Plains people? A. Oh, we'll work together on anything that comes up like that where they need help and we'll work together. It's just part of our job and we take care of it.

* * * * *

699 Whereupon,

ELMER SNYDER

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Can you give us your full name, please? A. Elmer Snyder.

Q. Can you talk up a little bit so we can hear you out here? Where do you live? A. I live in Munser, Kansas.

Q. And what is your occupation? A. Driller.

Q. Who do you work for? A. Great Plains.

Q. How long have you worked for them? A. I went to work in September of 1959.

Q. Have you done work for any other Angle companies in the last two and a half or three years? A. Yes.

Q. What other companies or divisions have you done work for? A. I've worked for Red Tiger Trucks and K.R.H.

Q. What kind of work have you done for Red Tiger Trucks?

700 A. Swamper.

TRIAL EXAMINER: What is it, a swamper?

Q. (By Mr. Marvin Martin) What is a swamper? A. Truck driver's helper.

Q. So that we have these terms right, a swamper is a helper for a truck driver? A. Truck driver, that is right.

Q. Tool dresser is a helper for a driller? A. That is right.

Q. Can you give me an example of the type of work you were doing as a swamper? A. Oh, hooking the winch line on, various items they want to move with the truck.

Q. To load and unload it? A. Unload it, load it, rigs, material.

Q. Give me an example of the type of work you did when you worked at the helium plant? A. I worked in maintenance.

Q. Give me an example of some kind of work you did there. Oh, we changed filters and packed cold boxes, insulation.

MR. WACKNOV: I object. He hasn't established a time.

TRIAL EXAMINER: Well, if Mr. Martin doesn't bring it out, you bring it out. Objection overruled.

Go ahead.

Q. (By Mr. Marvin Martin) You testified as to the kind of work — you started to testify as to the kind of work you did at the helium plant.

701 A. Helped hook up pipelines.

Q. Would that be inside or outside? A. Both.

Q. Go ahead. A. Well, last winter we built a boiler room, just any maintenance job that Mr. Roberts came up with for us.

Q. Can you give us the names of any of the maintenance people who are permanently stationed inside the plant that you worked with last winter? A. There is Jack Durban and Tommy Lynch, Gerald Julian, Dean Tittle, Larry Wyland.

Q. Did you work together with those men? A. Worked with those men.

Q. Where would you do what you call hooking up? What physical location would you do that work? Where would you do it?
A. You mean on pipelines?

Q. You made the comment a moment ago; you said you did hooking up. Where do you do such hooking up? A. It would be pipes, hooking them up to compressors, or tanks, or any such thing.

Q. Where might that be? A. It would be in the plant.

Q. Do you also do that work out on the line?

'702 A. I've also done that work out on the line.

TRIAL EXAMINER: Mr. Martin, I have forgotten. Is there a wire fence around the refinery and its out-buildings?

MR. MARVIN MARTIN: There's a wire fence that is around part of the refinery and part of the structures, Your Honor. That picture will show where that fence is and what is inside and outside.

TRIAL EXAMINER: It is enclosed so that there is an enclosure?

MR. MARVIN MARTIN: Yes, there is a wire fence. There is an enclosure.

TRIAL EXAMINER: I mean to say, it's not open on one side. It may not cover the whole area but whatever it covers it is closed. I'm just trying to find out whether the words inside and outside are meaningful.

MR. MARVIN MARTIN: I understand that it is enclosed. Whatever is inside that fence, it does close that off with just a gate opening, is that correct?

MR. WACKNOV: Mr. Martin referred to a picture. Is there a picture in evidence? I don't know of any.

TRIAL EXAMINER: No, he referred to it but it was in passing. We don't have a picture in evidence. If he wants to put it in, he will when the time comes.

Go ahead, Mr. Martin.

Q. (By Mr. Marvin Martin) Where are the pipelines that you've done this hooking up work that you speak of, do you recall?

703 A. No. Oh, on various locations, I guess, helped hook up gas wells through the main line.

Q. With whom do you work out there in the field when you're helping to hook up? A. Al Pesicka.

Q. When you're working with Al Pesicka, who is your, who is in charge of you? A. Al Pesicka.

Q. Do you take your orders from him? A. Yes.

Q. Who do you take orders from or instructions from when you're working inside in the maintenance area of the K.R.H. plant? A. W. L. Roberts.

Q. What about if you were over on Red Tiger Trucks? A. It would be Claude Branch.

Q. From whom do you draw your pay check? A. Frontier Oil.

TRIAL EXAMINER: Who?

THE WITNESS: Frontier Oil.

Q. (By Mr. Marvin Martin) Mr. Snyder, when you're working inside the K.R.H. plant, do you normally work with operational personnel or maintenance personnel? A. Just maintenance.

Q. Do you know during what times you've done work inside the

704 K.R.H. plant? A. Oh, I'd estimate in the last year and a half.

Q. What about with Red Tiger Truck? A. Oh, I would say ever since I went to work for the company.

TRIAL EXAMINER: Please speak up a little more loudly.

Q. (By Mr. Marvin Martin) And you went to work for the company when? A. In '59.

MR. MARVIN MARTIN: I have no other questions, Your Honor.

TRIAL EXAMINER: All right. Mr. Wacknov?

CROSS EXAMINATION

Q. (By Mr. Wacknov) Primarily, your job is with Red Tiger — excuse me, Great Plains Drilling, is that correct? A. That is correct.

Q. And sometimes you work for Red Tiger Trucking, is that correct? A. Yes.

Q. Now, you say that you have been working at the K.R.H. plant for approximately a year and a half now? A. At different times.

Q. At different times. When did these times occur, Mr. Snyder? Are you regularly scheduled to go into the plant and do work? A. No.

Q. When do you go into the plant? A. When Great Plains cable rigs goes down.

Q. What do you mean by that?

705 A. When there's no work for me to do.

Q. Well, what if the cable tool rig is down. Would you go to the K.R.H. plant or would you go to the Red Tiger Trucking Company and do what? A. That would depend on where Mr. Kruger told me to go.

Q. Approximately how long have you ever worked for K.R.H. steadily, or have you ever worked for them steadily? A. No.

Q. Approximately how much time in the last year and a half have you spent at the K.R.H. plant? A. I would have no idea.

Q. Would it be — A. (Interrupting) No percentage.

Q. How many days at a time would you spend there? A. Oh, anywhere from a week to two weeks.

Q. Would you spend less than a week there sometimes? A. Yes.

Q. Would you spend a day there sometimes? A. I have.

Q. You have no instructions, then, to go directly to the plant whenever your rig is down? A. No.

Q. And who are you to check with? A. Roy Kruger.

Q. Most of the time when your rig is down, who would you be do-
706 ing work for, Red Tiger Trucking, or Kansas Refined Helium?
A. It would depend on which one needed the help most.

Q. I know that but what is your best estimate as to most of the time. Who would you go to? Who would you usually be sent to?
A. Probably K.R.H.

Q. And do you have any estimate of how much of the time this might be in terms of a percentage? A. No, I don't.

Q. Now, while you were working at K.R.H. and while your rig was down, where did your check come from? What company was on the name of the check? A. Frontier Oil.

Q. Did you receive the same rate of pay, Mr. Snyder, working for Frontier Oil as you did working at K.R.H.? Was your pay changed at all? A. No.

Q. It would be the same rate? A. It stayed the same.

Q. Was there any time, Mr. Snyder, when you did not go either to Red Tiger Trucking or to K.R.H. during a period of shut-down on the rig? A. Yes, if I wanted the time off.

Q. Well, for what periods? Well, what do you mean, if you wanted some time off? A. Well, if I wanted to take a day or two off I wouldn't go up there.

707 Q. If you wanted to take a day or two off, that is perfectly all right with the company? A. It is all right with the company, yes.

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713 Whereupon,

LEO H. BAUM

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

714 DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Give us your full name, please? A. Leo H. Baum.

Q. Your address, Mr. Baum? A. Paradise, Kansas.

Q. What's your occupation? A. Driller.

Q. For what company? A. Great Plains Drilling Company.

Q. Who hired you to work for Great Plains? A. Roy Kruger.

Q. At the time you were hired, did you have any conversation with Mr. Kruger concerning the conditions of the hiring? A. Yes, sir.

Q. What was that conversation? A. The conversation was, I asked if I could be kept busy. If not so, why, I wouldn't consider the job.

Q. What answer did Mr. Kruger give you? A. He asked me if I would work for George Angle's other enterprises that he has and I said, "yes, I would; as long as I would be kept busy I would take the job."

MR. WACKNOV: Excuse me, Mr. Martin. Did we get the time when he was employed?

Q. (By Mr. Marvin Martin) Do you know when you went to work out there? A. September 17, 1966.

715 Q. Since you went to work for Mr. Kruger, where have you worked, and by that I mean what divisions or companies have you worked for? A. Well, I have been employed with Red Tiger.

Q. Red Tiger what? A. Red Tiger Truck and at the plant, the K.R.H. plant.

Q. You've also done work for Great Plains? A. Yes.

Q. Who do you get a pay check from? A. Frontier Oil Company.

Q. Is that true no matter which of these companies or divisions you're putting in your time for? A. I still receive my pay from Frontier Oil Company.

Q. What kind of work do you do for Red Tiger Trucking?
A. I'm an assistant for the truck driver.

Q. Is it the same thing as a swamper? A. Swamper, yes, sir.

Q. Would you describe briefly some of the work you do?
A. It is on hooking up onto a load and, also, unhitching from the same load.

Q. What about over at the K.R.H. plant. What did you do over there? A. Well, that includes various jobs, pipe work, pipe fitting, cleaning up, connections. I've been doing connection work there.

716 Q. What do you mean by cleaning up? A. That is getting ready to be placed in position. That is dressing them down.

Q. Dressing what down? A. Connections.

Q. Pipe connections? A. Yes, sir.

Q. Is this in regard to some pipeline some place? A. Throughout the plant.

Q. I see. When you work with K.R.H. people, is it in the maintenance department? A. Yes, sir.

Q. And who is your supervisor? A. W. L. Roberts.

Q. Do you work much with the operations department? A. No, not any.

Q. When you work in the Red Tiger Trucking area, who is your supervisor? A. Claude Branch.

Q. When you work with Great Plains, do they cable tool work there? A. Yes, that is the job.

Q. Do you also work with any of the pipeline people? A. No, no. That work is contract work.

Q. I see. Have you been kept busy since the time you went to
717 work for the Angle companies? A. Yes, I have.

Q. Where are you working right now? A. At the K.R.H. plant.

Q. What are you doing there right now? A. It is assisting the welder with the pipe fittings.

Q. You say you assist the welder. Would you explain for us a little more definitely what you do? A. Well, I do welding, also, sir.

Q. Who told you to come over to the K.R.H. plant this last time and to work there? A. I believe it was Roy Kruger, sir.

Q. Had you worked there before the present? A. Oh, yes.

Q. Who tells you when to leave the K.R.H. plant and go back some place else? A. That is up to Roy Kruger, sir.

Q. Does he come into the plant and tell you? A. Well, he'll usually give me a call after I leave the plant and when I return to my destination, home, I usually receive a call there at home unless I'm given a call from Claude Branch.

In other words, Claude Branch may call Roy or Roy call Claude and pass the message on to me.

TRIAL EXAMINER: Claude Branch calls and you go over to the trucking company, is that right?

718 THE WITNESS: Yes, sir.

TRIAL EXAMINER: Or Kruger calls, and you go back to your rig?

THE WITNESS: Yes, sir.

Q. (By Mr. Marvin Martin) Does Mr. Roberts or Mr. Stiff ever direct you to leave the plant and go back to one of these operations? A. I don't believe they ever have, sir.

Q. Who directs you to go over to the K.R.H. plant? A. Roy Kruger.

Q. What if you were working for Red Tiger Cat at the time, who would instruct you to go over to the plant? A. Red Tiger Cat, I don't —

Q. (Interrupting) I'm sorry, Red Tiger Trucking Company? A. Well, so far I've never ever left the trucks and went to the plant, sir.

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CROSS EXAMINATION

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720 Q. (By Mr. Wacknov) Now, the periods when you were at the K.R.H. plant, would that be when your rig is shut down? A. That is correct.

Q. Or when you worked as a swamper? A. Right.

* * * * *

723 Whereupon,

MERLE SMITH

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

724 Q. (By Mr. Marvin Martin) Would you state your full name, Mr. Smith? A. Merle, M-e-r-l-e, Smith.

Q. And your address? A. Olmitz, Kansas, O-l-m-i-t-z.

Q. What is your occupation? A. Senior operator at Kansas Refined Helium operation.

Q. How long have you worked for Kansas Refined Helium? A. The 9th of February, 1966.

Q. And your work, now — let me ask you, how long have you been senior operator? A. Somewhere on or around, I believe, it was in May, probably.

Q. Of what year? A. In '66 when I was made senior operator. I'm not positive of the date.

Q. Mr. Smith, can you explain to us briefly what control you have, if any, over the gas which comes in from the Frontier Oil or George Angle helium line? A. Well, we have a valve which we can control the gas, if their pressure is too high; if we're getting more flow than what we need, we can cut back on their flow or let their flow come in. Now, we've been running with that valve wide open, so, just depending on them, because our gas out-put, in-put has been small.

Q. How do you know how much quantity is flowing into the plant out of that pipeline? A. We have a flow meter on which it is recorded.

725 Q. Where is that flow meter? A. On our panel board.

Q. Would you describe it, please? A. The name of it is FR-100, which is just, it stands for flow recorder, and there is a roll chart, and it is timed on a timeclock which records at a certain scale on this chart and there is a meter there, or a scale which you can figure by, figure out standard cubic feet per hour, which comes through the valve.

Q. Can you look at this flow chart, then, and tell what the quantity of flow has been during the preceding period? A. Yes.

Q. How long a period? A. You can look back, I'd say, from the time the plant has been started because as the charts run out, we change charts, and mark the time and the date that the new chart was put on, and it is a continuous operation, so that, unless something has been wrong with the instrument, which there hasn't been since I've been there, you can look back and tell what the reading has been.

Q. What is the proper amount of flow for your operation at the present time?

TRIAL EXAMINER: Mr. Martin, do we have to know that in this case? I'm not going to change that valve.

MR. MARVIN MARTIN: Let me short-cut this a little bit, if I can.

Q. (By Mr. Marvin Martin) Can you, also, test the pressure of the gas which comes in?

726 A. We have a pressure recorder.

Q. Where is that? A. It is on our control panel.

Q. Do you have any responsibility toward looking at and watching these items, as a senior operator? A. Yes.

Q. Why do you have such a responsibility? A. Well, if our pusher goes out, let's say, for instance, our pressure goes up and our flow goes down, then we would knew that we're freezing up on the inside of the plant, on the plant side of our control valve. All right,

CROSS EXAMINATION

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720 Q. (By Mr. Wacknov) Now, the periods when you were at the K.R.H. plant, would that be when your rig is shut down? A. That is correct.

Q. Or when you worked as a swamper? A. Right.

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723 Whereupon,

MERLE SMITH

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

724 Q. (By Mr. Marvin Martin) Would you state your full name, Mr. Smith? A. Merle, M-e-r-l-e, Smith.

Q. And your address? A. Olmitz, Kansas, O-l-m-i-t-z.

Q. What is your occupation? A. Senior operator at Kansas Refined Helium operation.

Q. How long have you worked for Kansas Refined Helium? A. The 9th of February, 1966.

Q. And your work, now — let me ask you, how long have you been senior operator? A. Somewhere on or around, I believe, it was in May, probably.

Q. Of what year? A. In '66 when I was made senior operator. I'm not positive of the date.

Q. Mr. Smith, can you explain to us briefly what control you have, if any, over the gas which comes in from the Frontier Oil or George Angle helium line? A. Well, we have a valve which we can control the gas, if their pressure is too high; if we're getting more flow than what we need, we can cut back on their flow or let their flow come in. Now, we've been running with that valve wide open, so, just depending on them, because our gas out-put, in-put has been small.

Q. How do you know how much quantity is flowing into the plant out of that pipeline? A. We have a flow meter on which it is recorded.

725 Q. Where is that flow meter? A. On our panel board.

Q. Would you describe it, please? A. The name of it is FR-100, which is just, it stands for flow recorder, and there is a roll chart, and it is timed on a timeclock which records at a certain scale on this chart and there is a meter there, or a scale which you can figure by, figure out standard cubic feet per hour, which comes through the valve.

Q. Can you look at this flow chart, then, and tell what the quantity of flow has been during the preceding period? A. Yes.

Q. How long a period? A. You can look back, I'd say, from the time the plant has been started because as the charts run out, we change charts, and mark the time and the date that the new chart was put on, and it is a continuous operation, so that, unless something has been wrong with the instrument, which there hasn't been since I've been there, you can look back and tell what the reading has been.

Q. What is the proper amount of flow for your operation at the present time?

TRIAL EXAMINER: Mr. Martin, do we have to know that in this case? I'm not going to change that valve.

MR. MARVIN MARTIN: Let me short-cut this a little bit, if I can.

Q. (By Mr. Marvin Martin) Can you, also, test the pressure of the gas which comes in?

726 A. We have a pressure recorder.

Q. Where is that? A. It is on our control panel.

Q. Do you have any responsibility toward looking at and watching these items, as a senior operator? A. Yes.

Q. Why do you have such a responsibility? A. Well, if our pusher goes out, let's say, for instance, our pressure goes up and our flow goes down, then we would knew that we're freezing up on the inside of the plant, on the plant side of our control valve. All right,

if the pressure would go down, and the flow would go down, also, if our pressure would go down as well as the flow going down, we would know that they're losing gas some place out on the wells and then we call Al Pesicka or somebody who is in charge of the pipeline to check out the compressors in the wells to see why we can't get more gas to come in.

Q. Do you have communications with Pesicka or the people who are in that pipeline concerning the content of the incoming gas?
A. I didn't get that question.

TRIAL EXAMINER: Neither did I. There's no evidence here that they can assess the content, except that it might have some water or oil in it.

Q. (By Mr. Marvin Martin) Let's put it this way, do you know basically, what the content of the gas is coming in?

727 A. Yes.

Q. Does it make any difference if that content changes?
A. Yes, it does.

Q. All right, sir —

TRIAL EXAMINER (interrupting): Do you have a meter that tells you when the content of the gas, the make-up of the gas changes?

THE WITNESS: We have a helium flow meter which tells us the amount of helium percentage that is in our gas as it comes through the lines and we also have separators which knocks out the water; we can tell when we're getting more water than we should be getting and we can tell, ordinarily, on our CO_2 carbon dioxide that we're supposed to knock out of our gas if there is something wrong with the gas, or if the wells need blowing or if we're getting too much water coming into the gas, we can ordinarily tell.

TRIAL EXAMINER: All right, very clever. .

Q. (By Mr. Marvin Martin) When you do have this information, who do you relay it to, if anyone? A. Ordinarily, Al Pesicka, if I can get ahold of him.

Q. Who else, if you couldn't talk to him? A. I would either call John Young or Bob Mootz, if it were something I thought was on the wells. I would call one of those men.

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728 CROSS EXAMINATION

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729 Q. (By Mr. Wacknov) There are two gas trunk lines going into the plant? A. We have one gas line which comes from the Rush Gas Field and, then, we also have a line coming from the Otis, from the government helium plant at Otis, crude helium line.

* * * * *

734 Whereupon,

HENRY TYLER

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testifed as follows:

TRIAL EXAMINER: I believe you were already sworn but it doesn't hurt to administer it again.

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Would you give us your full name, please? A. Henry Tyler.

Q. Your address? A. 1318 MacArthur, Great Bend, Kansas.

Q. Your occupation? A. Operations and engineering manager.

735 Q. You've worked there at the plant for some time? A. Yes.

Q. Possibly, not exactly in the same position, is that correct? A. Yes.

* * * * *

747 Q. And what is the purpose of the pit that is marked on the photograph? A. It's a storage area for water to pump. We have fire hydrants within the plant. In the event of a fire, we would put out of this pit; the wells could not deliver large volumes of water.

Q. Who else uses this water pit, anyone? A. No. I take that back. They have hauled water out of there to rigs on two occasions that I can recall.

Q. By them or they, who do you mean? A. Hayes Tank.

Q. Is that another one of the Angle divisions? A. Yes.

Q. Now, who uses this yard area that is marked on the photograph? A. Red Tiger Drilling, Red Tiger Trucking, Great Plains, Red Tiger Cat.

Q. Does K.R.H. have any use of it? A. Yes, we have several items stored there.

* * * * *

751 Q. (By Mr. Marvin Martin) I notice it is listed as feed gas. Will you explain the term feed gas?

752 A. It's a gas that we process. We extract the helium from it, sir.

Q. Do you use other elements in that gas in its natural state to run your plant? A. Yes, we use the methane and the nitrogen. We extract the nitrogen, purify it and liquefy it for refrigeration.

Q. But if you did not have the necessary gas coming in from the Angle wells, could you operate the plant? A. No.

Q. How long have you been getting crude helium from this government plant? A. We started hauling crude helium on June the 8th, I believe, in trailers.

Q. What year? A. This year, 1967.

* * * * *

756 MR. WACKNOV: Before I begin, Your Honor, I notice that Mr.

757 Tyler testified at the prior representation proceeding and could you clarify what treatment this transcript of the representation hearing is going to have with regard to this case?

I believe originally you said it would just be a statement of facts that happened in the past but, then, upon rethinking the matter you stated that it would be, the witnesses had testified to this —

TRIAL EXAMINER (interrupting): You stipulated, I think; I think everybody stipulated as to that, that if the same witnesses were called and asked the same questions, they would make the same answers and then it — that way it becomes incorporated into the record here.

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CROSS EXAMINATION

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764 TRIAL EXAMINER: What's your turn-around that you referred to? Is that a swing of shifts?

THE WITNESS: No, sir, it's a plant shut-down to correct some matter, in addition, to derind the plant, that's to get the water or whatever might be plugging the plant.

TRIAL EXAMINER: There are times when you shut down the whole plant for sort of a clean-up?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Do you need more men at that time than just the regular plant personnel?

THE WITNESS: Yes, sir.

765 TRIAL EXAMINER: How often does that occur?

THE WITNESS: We had one in September of '66 and in January of '67; we just went through a smaller, not a total shut-down, a turn-around, only a turn-around of our liquefier.

TRIAL EXAMINER: When?

THE WITNESS: Last week; however, we didn't use any of those people that were busy on the compressor.

* * * * *

784 Room 1020
Sedgwick Courthouse
Wichita, Kansas
Thursday, August 10, 1967

* * * * *

806 Whereupon,

HAROLD REX MARTIN

was called as a witness by and on behalf of the Respondent and, having
807 been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Martin) Will you state your full name, please? A. Harold Rex Martin.

Q. And will you state your address? A. 3403 Bennett, Wichita, Kansas.

Q. What's your occupation? A. I'm employed by George Angle; I'm in charge of his accounting department, his accounting manager.

Q. Where are you located? A. 1720 Wichita Plaza Building.

Q. In the course of your occupation as accounting manager for George Angle, do you have access to and control of the various time records for the employees in the various George Angle enterprises and divisions? A. Yes, I do. Under my control, it would be all of the time records, the payroll and the analysis we've done with the payroll records.

Q. And do you make an analysis periodically of the time records of the employees to determine where they have worked during the year? A. As we receive each payroll period, we receive the payrolls from the various companies, as we receive these, the first thing we do is make the payroll out itself; the second step would be
808 to analyze the sheets for the various treatments of where they have been, where they appeared, and we analyze these completely.

This is done every two weeks and this analysis is brought forward at the end of each year, a complete analysis; we can tell for how many hours Great Plains spent on any other operation in the company.

Q. Have you, at my request, taken an analysis of the Great Plains Drilling for the years 1965, 1966 and 1967, to date? A. Yes.

MR. MARTIN: I'm going to hand the reporter an instrument and ask if she'll mark it as Respondent's Exhibit 26.

(The document above-referred to was marked Respondent's Exhibit No. 26 for identification.)

Q. (By Mr. Martin) I'm going to hand you what has been marked Respondent's Exhibit No. 26 and ask if you can identify it. A. Yes, this is a summary of the hours of the men working under the title of Great Plains Drilling for the years 1965, '66 and '67, to date, by date; I mean the ending payroll period, I believe, was 8/5/67. It shows on here for '65, for instance, that these men —

Q. (Interrupting) Don't tell me what it shows. I just want to know if you prepared it. A. Yes, I did.

Q. Is it an accurate summary of the hours which were spent by
809 the employees of Great Plains Drilling Company, working in the various areas shown on the Exhibit? A. Yes, it is.

MR. MARTIN: Your Honor, we move for the receipt of Respondent's Exhibit 26.

* * * * *

813 TRIAL EXAMINER: All right, it's received.

814 (The document above-referred to, heretofore marked Respondent's Exhibit No 26, was received in evidence.)

MR. MARTIN: I'm going to hand the reporter an instrument and ask that she mark that as Respondent's Exhibit No. 27.

(The document above-referred to was marked Respondent's Exhibit No. 27 for identification.)

TRIAL EXAMINER: Mr. Martin, are you going to have the whole series of the same type of analyses?

MR. MARTIN: Your Honor, I have three of them.

TRIAL EXAMINER: Are they all kept by Mr. Martin?

MR. MARTIN: I understand they are but he did not —

TRIAL EXAMINER (interrupting): What?

MR. MARTIN: With one exception; I understand that someone in his employ did the physical preparation of this Exhibit.

TRIAL EXAMINER: Someone under his employ?

MR. MARTIN: Yes, and per his instructions.

TRIAL EXAMINER: Why don't you, you have two more you say; all right, let's get them together. No. 27 will be the analysis of time for what company?

MR. MARTIN: No. 27 is for Red Tiger Trucking Company.

TRIAL EXAMINER: Same period, '65, '66 and '67 up to August 5, 1967, is that correct, Mr. Martin?

THE WITNESS: Yes.

TRIAL EXAMINER: All right. What is 28, an analysis of time
815 for what company?

MR. MARTIN: It is the company, Hayes Tank Service for January 1, '65 through June 30, 1967.

TRIAL EXAMINER: O.K. Now, you can decide whether you want voir dire on this.

How far does Red Tiger go, August 5 or June 30? Do you know, Mr. Martin?

THE WITNESS: August 5.

TRIAL EXAMINER: Now, let's get No. 28 marked.

(The document above-referred to was marked Respondent's Exhibit No. 28 for identification.

* * * * *

Q. (By Mr. Wacknov) Referring you to Respondent's Exhibit No. 27, which is a summary of the Red Tiger Truck man hours, you have listed K.R.H. hours; what do you mean by K.R.H. hours? A. Well, actually, what we mean here is that during this 1427-1/2 hours, they were performing duties for K.R.H. I don't know what they were doing but they were doing it for K.R.H. This is a breakdown of their work performed.

* * * * *

816 TRIAL EXAMINER: All right. They're received as Respondent's 27 and 28.

(The documents above-referred to, heretofore marked Respondent's Exhibit Nos. 27 and 28, were received in evidence.)

* * * * *

823 Q. (By Mr. Martin) Mr. Martin, how do your W-2 forms for all of Mr. Angle's employees read? A. They're stamped with Frontier Oil Company.

Q. Do they use a single number for all of the employees? A. Yes, we do. We have one number, George Angle doing business as Frontier Oil Company, which is our business number furnished us by the government, and everything we turn in is turned in under this one number.

TRIAL EXAMINER: Including K.R.H. people?

THE WITNESS: Including everybody.

Q. (By Mr. Martin) Let me ask you, does your unemployment compensation return that you file, how does it read? A. It's filed under George Angle doing business as Frontier Oil Company.

Q. What about your — is this true for K.R.H. employees, also? A. Yes, all employees. All employees that are employed by Mr. Angle are included on these government documents as Frontier Oil Company.

Q. What about your withholding and quarterly returns that are filed?

TRIAL EXAMINER: Well, they follow the W-2.

THE WITNESS: They're all the same. They're filed as George Angle doing business as Frontier Oil Company.

824 Q. (By Mr. Martin) How about for the Labor Department, for example? A. We furnish the Labor Department with a report of all employees and this is filed as George Angle doing business as Frontier Oil Company.

Q. Can you explain your banking system for Frontier Oil Company, including various divisions which have been discussed here in the last day or so and K.R.H.? A. Yes, we have a commingled fund and we have separate accounts but all this money comes from one fund and it's really transferred back between the two accounts. We pay individual expense items out of the different funds and we have paid K.R.H. expenses, for example, under K.R.H. checks, and we also have a steady habit of paying under Frontier checks on which we designate on the bottom as paying K.R.H. Invoice No. such-and-such. This is the bacic reason, one problem we have had in the past is paying the bills of Kansas Refined Helium Company with a Frontier check and we've had suppliers question who this should be credited to.

Normally, we've had no problem with this. We pay K.R.H. bills with Frontier checks and so on.

TRIAL EXAMINER: Well, Mr. Martin, along the lines of this same set-up, do the employees of the various enterprises receive their pay checks on checks endorsed or printed with the name of that particular enterprise, K.R.H., for example?

825 THE WITNESS: K.R.H. receives pay checks imprinted Kansas Refined Helium Company with the exception of Al Pesicka. His check comes out under the check of Frontier Oil Company. The two men that work under him are on Kansas Refined Helium Company letterhead and their time, for instance, comes in under Kansas Refined Helium Company time sheets.

TRIAL EXAMINER: What do you do, take a check from Frontier and put it into K.R.H. to meet the K.R.H. payroll?

THE WITNESS: Oh, yes; generally, it's just a transfer of funds. It's all one fund; we transfer to suit ourselves.

TRIAL EXAMINER: No question about that. Go ahead, Mr. Martin.

MR. MARTIN: I'm going to hand the reporter a five-page document and ask her if she'll mark that as Respondent's Exhibit No. 29.

(The document above-referred to was marked Respondent's Exhibit No. 29 for identification.)

Q. (By Mr. Martin) I'm going to hand you what the reporter has marked as Respondent's Exhibit No. 29 and ask if you can tell me what that is. A. These are xeroxed copies of the employees' various, individual payroll sheets.

Q. What employee does that cover? A. These are the various records for 1965, '66 and '67 of Al Pesicka.

826 Q. Does your office, or from that form, can you tell which of George Angle's various divisions, companies, enterprises that the employee is working for at the time? A. Yes, we can.

Q. Can you tell me on this particular employee where he was working during the periods shown on these Exhibits? A. The first page is Al Pesicka's payroll Sheet B for 1965, and it shows —

TRIAL EXAMINER (interrupting): Don't tell us what is on it. Does it just show where he worked? In other words, this is a profile of his place of work?

THE WITNESS: This is a profile of his individual payroll record.

TRIAL EXAMINER: Payroll record, that means the company or the enterprise that paid his salary each week?

THE WITNESS: No, I mean this is an accumulation of all his pay, all the pay this man has received during this period, his pay checks. From this record we prepare our W-2 Forms, employment forms.

TRIAL EXAMINER: How is that broken up? Is that analyzed in the columns?

THE WITNESS: This is analyzed by dollars. This is money received; this is his payroll record. This is analyzed by dollars, hours worked.

TRIAL EXAMINER: Is this an extension of his hours worked?

827 THE WITNESS: This is payroll itself, the actual dollars received for hours worked.

TRIAL EXAMINER: I don't know if I understand. I guess I will get to see it in a few minutes. It's taken from your records?

THE WITNESS: Yes, it is.

Q. (By Mr. Martin) It's kept under your control? A. Yes, it is.

MR. MARTIN: We move for the introduction of Respondent's Exhibit No. 29.

* * * * *

828 Q. (By Mr. Martin) Can you tell from this record, Mr. Martin,
829 what time Mr. Pesicka changed over and went to the K.R.H. from the pipeline at Great Plains? A. Yes, it's on his record here; this is 8/1/65.

TRIAL EXAMINER: On 8/1/65 he went on the K.R.H. payroll as pipeline supervisor?

THE WITNESS: As of '65 he went over to the K.R.H. pipeline.

TRIAL EXAMINER: Is this K.R.H. payroll?

THE WITNESS: No, sir, he's not on the K.R.H. payroll. His pay comes out of the Frontier payroll.

TRIAL EXAMINER: That goes right on up to date?

THE WITNESS: Up to date, yes, sir.

TRIAL EXAMINER: O.K.

Q. (By Mr. Martin) Mr. Martin, I want to ask you if you're acquainted with the records of the two employees that work with Mr.

Pesicka, the Young records and the Mootz records concerning payroll? A. Yes, I am.

* * * * *

831 Q. (By Mr. Martin) Did Mr. Altha Young work for both Great Plains and Kansas Refined Helium Company of the George Angle companies? A. Yes, he has.

Q. Can you tell from this record what date he transferred from Great Plains over to Kansas Refined Helium Company? A. He was working for Great Plains, according to this, this is where we have a scratch mark, he transferred over on October 24, 1966, or the approximate time —

TRIAL EXAMINER (interrupting): But he's still on the pipeline.

THE WITNESS: He transferred from Great Plains to the pipeline at that time, to Kansas Refined Helium.

TRIAL EXAMINER: Well, Pesicka is paid by Frontier?

THE WITNESS: Correct.

TRIAL EXAMINER: But his assistant is paid by K.R.H., right?

THE WITNESS: That's correct.

TRIAL EXAMINER: O.K.

Q. (By Mr. Martin) Now, has Altha Young ever come back over to the K.R.H. payroll? A. No, sir, he still appears on the K.R.H. payroll; he transferred to the plant and then went to the pipeline but he's still on the K.R.H. pipeline, excuse me, payroll.

832 TRIAL EXAMINER: And his checks are still marked K.R.H.?

THE WITNESS: Yes.

TRIAL EXAMINER: They were before he went into the plant, weren't they?

THE WITNESS: No, they weren't. He had received his pay check as an employee of the Great Plains under the Frontier payroll. At the time he transferred, his time sheets would appear with the Kansas Refined Helium time sheets and he got a Kansas Refined Helium pay check.

TRIAL EXAMINER: You mean he went from some other operation into the plant and from the plant onto the pipeline?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: O.K. That explains it.

MR. MARTIN: I'm going to hand the reporter the instrument we've been discussing and ask if she'll mark that as Exhibit, Respondent's Exhibit No. 30.

(The document above-referred to was marked Respondent's Exhibit No. 30 for identification.)

MR. MARTIN: I'll hand the reporter another document and ask that it be marked Respondent's Exhibit No. 31.

(The document above-referred to was marked Respondent's Exhibit No. 31 for identification.)

Q. (By Mr. Martin) I'm going to hand you what the reporter has marked as Exhibit 31 and ask if you can identify that also?

833 A. This is the individual payroll record of Al Mootz for 1966 and '67, to date.

Q. Can you tell by that payroll when he went to work for the George Angle companies? A. Yes, he went to work during the period ending 7/23/67, excuse me, 1966.

Q. And can you also tell from that whether or not he's still on the payroll of the K.R.H. group and has been since the time he began? A. Yes, he's been on the K.R.H. payroll ever since he commenced his employment on 7/23/66 and he still is.

TRIAL EXAMINER: What does he do?

THE WITNESS: He is an assistant to Mr. Al Pesicka on the pipeline.

MR. MARTIN: We offer Respondent's Exhibit Nos. 30 and 31.

TRIAL EXAMINER: Any objection?

MR. WACKNOV: No objection.

TRIAL EXAMINER: Received.

(The documents above-referred to, heretofore marked Respondent's Exhibit Nos. 30 and 31, were received in evidence.)

* * * * *

837 Whereupon,

NORMAN KLEIN

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Martin) Mr. Klein, you've previously been on the stand in this hearing?

TRIAL EXAMINER: Yes, Mr. Klein is the controller of all the Angle enterprises. I also remember that. He's also general manager of the plant.

Q. (By Mr. Martin) Now, I'll ask you, Mr. Klein, about the communication systems among your various enterprises of the George Angle enterprises. What type of telephone communication system do

838 you have among your various George Angle divisions or enterprises? A. Well, we have a series of mobile phones.

TRIAL EXAMINER: Mobile phones?

THE WITNESS: Mobile phones that are located in all of our fields; they're located in all of our drillers' cars, drillers, superintendents' cars, geologists' cars and Al Pesicka's pipeline, the vehicle he uses on it. They're located in every rotary rig; they're in our cable tool units, I believe, also.

Q. (By Mr. Martin) What about your control operators at the plant, do they have access to the telephones? A. Yes, there are phones located throughout the plant and they can dial direct to any of the units out in the field.

Q. Any one of the mobile units? A. Yes, sir.

TRIAL EXAMINER: Is this some system leased from the telephone company which is self-sufficient, almost like a building itself with internal dialing?

THE WITNESS: No, sir, it's a regular mobile phone system.

TRIAL EXAMINER: Do you have to go through a central operator to get a mobile phone from the plant phone?

THE WITNESS: We don't in our office; we just pick up and dial direct to it and it will ring out in their car. It will honk the horn in the car and they know, if they're anywhere in the vicinity, why, they can hear the horn honk.

839 TRIAL EXAMINER: Is that contained throughout the system so that one mobile phone can dial another mobile phone?

THE WITNESS: Yes, sir, that is correct.

TRIAL EXAMINER: It's almost like room-to-room in a building, isn't it?

THE WITNESS: Yes, sir, there are some stations where they pick it up and they have to go to the operator and have her dial for them, depending upon the location of direct dialing; some places in Kansas we don't have direct dialing.

TRIAL EXAMINER: Do you need direct dialing for one mobile phone to talk to another?

THE WITNESS: Not for one mobile to talk to another.

TRIAL EXAMINER: Or for one mobile to talk to the K.R.H. plant?

THE WITNESS: Not for them to talk to the K.R.H. plant if they're in the immediate vicinity.

TRIAL EXAMINER: I don't know enough about the telephone system. I suppose it's got to go through some central office to get beefed up, the power isn't enough.

THE WITNESS: Basically, I would say that they could with the exception, there are exceptions, there are areas where they can't dial

direct, but most of the places they can dial direct from their phones to our Wichita office or to the plant or we can do the same thing.

TRIAL EXAMINER: Well, when they dial direct, what do they
840 dial? Do they dial a brief number or a code number or what?

THE WITNESS: They dial a regular phone number.

TRIAL EXAMINER: With an area code?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Well, you could do that even if you were not in the same company; if I had a mobile phone and it was a direct dialing system and I dialed, I can dial anybody.

THE WITNESS: That's right.

TRIAL EXAMINER: All right. Go ahead.

Q. (By Mr. Martin) Mr. Klein, are you familiar with the storage yard which is located at the Kansas Refined Helium Company plant premises? A. Yes, I am.

Q. Are you also acquainted with the revamping and additional construction that has been going on at the plant? A. Yes, I am.

Q. For the past several years? A. Yes.

Q. Can you tell me how long these additions and revamping and improvements have been going on? A. It's been going on continuously since we started operations.

Q. What is the purpose of the improvements and the revamping? A. Well, we have a couple of purposes, actually. One of them, the plant wasn't designed correctly to begin with; we had numerous process problems. We weren't getting the out-put that we wanted out of the
841 plant; there were some vessels and instruments and various things which were inadequate for our operations and, also, we went through a second purpose, which was to increase our capacity at the plant and performance.

Q. Who has done the improvements and additional construction that have gone on since, let's say, June of 1966? A. Well, we've

tried to do as much as possible ourselves, and when I say ourselves, I mean all of the K.R.H. people, Frontier people, all the people, everybody and George Angle has tried to do as much in our organization as we could. When we had to get a crane or some piece of equipment we didn't have, we would rent it from some place else.

Q. Now, in the K.R.H. plant, the personnel there, not personnel on the outside, but personnel within the plant, what group would ordinarily work on this revamping and construction? A. Normally, the maintenance would work on it.

Q. Do you ever have occasions when operating personnel work on it? A. I think there have been occasions when operating personnel have worked on it.

Q. Is that unusual? A. I would say that it is an exception rather than the rule.

Q. What about the maintenance people themselves? Is it usual for them to be working on this construction? A. Yes, it is.

842 Q. Do you have any idea of how much additional, cost-wise, construction you've put into that plant since June of '66? A. June of '66?

Q. Yes. A. Oh, probably half a million dollars.

Q. Now, in the handling of — in the reconstruction or revamping that you've been doing, would you describe some of the types of items that you've been putting in? A. Oh, we've added new propane condenser.

Q. Where did you get it? A. We purchased the equipment; Henry Tyler, our process engineer and, also, engineering operations manager, he performed the engineering drawings on it and purchased the equipment and had it assembled.

Q. Had it assembled where? A. In California; we had the two bundles put inside the condenser itself and then shipped to Wichita and we erected it.

Q. Who is we? A. The maintenance department erected it at the K.R.H. plant.

TRIAL EXAMINER: Didn't you have to build a slab for it? It doesn't stand on the ground?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Did you hire some concrete outfit to lay this slab?

THE WITNESS: We hired a concrete outfit to come in with the ready-mix concrete and pour it. We put in the foundation ourselves.

843 TRIAL EXAMINER: And then the condenser was delivered and placed on that?

THE WITNESS: Delivered and placed on the foundation and then the maintenance —

TRIAL EXAMINER (interrupting): Who did that?

THE WITNESS: I'm not sure who delivered it. The maintenance people then hooked it up, did this with the necessary piping and so on.

Q. (By Mr. Martin) Where did they get the piping? A. Oh, from our inventory.

Q. Where do you keep your inventory? A. In the yard.

Q. By the yard, do you mean the yard there on the K.R.H. plant? A. Yes, sir.

Q. All right. Give me another example of the type of things you've been doing? A. Oh, let's see. We've added new gaseous storage tanks at the plant. This virtually doubled our gaseous helium storage capacity.

TRIAL EXAMINER: How large is this?

THE WITNESS: Well, these will hold —

TRIAL EXAMINER (interrupting): Give us the size, not in cubic feet; it's difficult for me to visualize. What is the — they're round, aren't they?

844 THE WITNESS: Yes, they're about five feet in diameter, maybe 30 or 40 feet long.

TRIAL EXAMINER: They lie horizontal? They're these big things we saw in the picture?

THE WITNESS: In that picture we hadn't installed them at the time. They're similar to that, only smaller. These will hold up to 6,000 pounds pressure; those other ones you saw in the picture are low-pressure tanks that will go up to maybe 250 pounds pressure.

Q. (By Mr. Martin) Have you also laid additional line out there? A. Yes, there has been numerous revamping of piping.

Q. Is that both inside and outside of this that was described yesterday? A. Yes, sir.

TRIAL EXAMINER: Do you buy those gas tanks all made?

THE WITNESS: We bought these used from the government, a missile site; they were nitrogen tanks to begin with and then we installed them in our plant.

TRIAL EXAMINER: Also had somebody pour a concrete foundation?

THE WITNESS: We built the foundation and had the concrete brought in, ready-mix, cheaper that way.

TRIAL EXAMINER: All right.

Q. (By Mr. Martin) You say "we" did that, you mean maintenance
845 employees of K.R.H., is that what you mean? A. Yes, that's what I'm speaking of, the maintenance people; there may have been a few operational employees who would come out from time to time.

Q. Could there have also been some employees from Great Plains or some other division? A. Very definitely, there could have been.

Q. You started to mention piping, additional piping that had been constructed. Would you have any idea of how many feet of additional pipe you've put in in the last year and a half? A. It would be a guess, but I would say that it has been quite extensive.

Q. And who has put that pipe together? A. Our maintenance department almost exclusively.

Q. What if it is outside the fence that has been discussed, who puts it in, or do you know? A. Well, the maintenance department; if it has to do with the plant, mostly the maintenance department will do this, all of the internal piping in the plant. If there is a short line that they need to lay, for example, they'll lay that out there, or lay a gas line or a floor line.

Q. And when you get further out in the field, who normally would put the line down? A. If we have a large line of any distance, we normally hire a pipeline contractor to take it on a per foot basis to lay so many miles of line.

846 TRIAL EXAMINER: The testimony yesterday showed that the pipelines from the wells were contracted out.

THE WITNESS: In general, we hook them up ourselves, though.

Q. (By Mr. Martin) Do you have a by-pass line in there inside the plant, or close by the plant? A. Yes, we do; we have a feed gas by-pass line.

Q. Who built that? A. We built that, the maintenance department at the plant, along with, well, that was kind of a community effort; American Messer was still working at or around the plant at the time, and we were and they were working on it along with our K.R.H. employees. Several people from other Angle organizations were there.

TRIAL EXAMINER: Well, that puts it back quite some time, does it not, if American Messer was still on. As I recall, they left early in '66, didn't they?

THE WITNESS: I believe it was in '65, something like that, sir.

TRIAL EXAMINER: All right.

* * * * *

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD

Seventeenth Region

In the Matter of:	
GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY,	
and	Case Nos. 17-CA-3021
OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO.	17-CA-3021-2

The above-entitled matter came on for hearing before the Honorable Sidney D. Goldberg, Trial Examiner, at the Post Office Building, Wichita, Sedgwick County, Kansas, commencing at approximately 11:00 o'clock a.m. on the 24th day of April, 1968.

Mr. Gerald A. Wacknov, Federal Building, 601 East 12th Street, Kansas City, Missouri, appearing for the Government as attorney for the General Counsel.

Mr. Robert N. Partridge of Foulston, Siekfin, Powers, Smith & Eberhardt, appearing on behalf of Mr. Thomas B. Garrett.

Mr. Robert Martin of Martin, Pringle & Schell, 1111 Wichita Plaza Building, Wichita, Kansas, and Mr. Marvin Martin of Martin, Wooley & Churchill, 458 North Market, Wichita, Kansas, appearing on
2 behalf of the Respondent.

Mr. Patrick F. Kelly of Frank & Kelly, Union National Building, Wichita, Kansas, appearing on behalf of Oil, Chemical and Atomic Workers International Union, AFL-CIO.

* * * * *

4 PROCEEDINGS

EXAMINER GOLDBERG: Gentlemen, this hearing will be in order.

Will counsel for the various parties please state their appearance, Government first. Mr. Wacknov, state your appearance, please.

MR. WACKNOV: Gerald A. Wacknov, W-a-c-k-n-o-v, representing the Government in this case as counsel for General Counsel.

EXAMINER GOLDBERG: Mr. Kelly?

MR. KELLY: Patrick F. Kelly, here in behalf of the Union.

EXAMINER GOLDBERG: Mr. Partridge?

MR. PARTRIDGE: I am appearing here, Robert N. Patridge, Wichita, Kansas, in behalf of the witness, Tom Garrett.

EXAMINER GOLDBERG: Mr. Martin?

MR. ROBERT MARTIN: Marvin J. Martin and Robert Martin, appearing on behalf of the Respondent, George A. Angle, d/b/a Kansas Refined Helium Company.

EXAMINER GOLDBERG: Now, gentlemen, we have convened this hearing in the counsel room without any witnesses or the public being present for the reasons that have been advanced to me by counsel in informal discussions while waiting for the appearance of the official reporter through the cooperation of the court, and with the official reporter of the court we are able to proceed without undue delay. I wish to express my gratitude to the officials of the court and the reporter for coming to our assistance under the circumstances.

Now, Mr. Martin, — I am addressing Mr. Marvin Martin unless you tell me, Mr. Robert Martin, that you are going to bear the laboring oar here. I am assuming Marvin Martin is continuing to be prime counsel. Mr. Martin, this hearing was scheduled pursuant to the Board's order directing that the testimony of the witness, Garrett, be heard. In effect, this is a reversal of my order of about March, 1967, denying your motion to reopen the original hearing of January, 1967, to take this witness' testimony. Are you ready to proceed?

MR. MARVIN MARTIN: We are, Mr. Examiner, although it has come to our attention that — the same information I think to which you alluded in your opening remarks as to the present condition or possible condition of Mr. Garrett. We are ready to proceed.

EXAMINER GOLDBERG: Now, there has been no record of that up to this point, and while I have been told a good deal about it and we have discussed this matter, we are now in a position where it must be stated formally.

Mr. Partridge, will you please tell us what you have told us previously about the situation?

* * * * *

MR. PARTRIDGE: If the hearing officer please —

EXAMINER GOLDBERG: Excuse me, I am a trial examiner. It is quite different from that of a hearing officer.

MR. PARTRIDGE: All right. I apologize.

The sole and only function that I serve in this case is as Mr. Tom Garrett's personal lawyer. My firm is representing Mr. Garrett and his mother in connection with an estate proceeding that is currently in our office unrelated to anything in this case, and I have taken on representation of Mr. Garrett in connection with why we are here today and have talked with him, counseled with him, on two or three occasions over the last several months in connection with these proceedings. Mr. Garrett is under treatment, and that is probably not a fair connotation. Mr. Garrett has as his physician in Great Bend, Kansas, Dr. David Shivel, S-h-i-v-e-l. I talked with Dr. Shivel by telephone yesterday afternoon in connection with the pending hearing here today and was talking with him about Mr. Garrett's physical and mental emotional condition. I think it is fair to say that Dr. Shivel is very conscious of the fact that he is only, a term he used, a general practitioner and doesn't say he is a psychiatrist and doesn't hold himself out to be, but in talking with him, I made notes of our conversation and he told me that, in effect, that Mr. Garrett is a recognized emotionally unstable person is the term that he used. And inquiring what this meant, he indicated that Mr. Garrett had not demonstrated the symptoms evidencing a nervous breakdown during any consultation

that he, Dr. Shivel, had had with Mr. Garrett, but he felt that these were because — this fact was because that these visits were under conditions where there weren't any severe pressures pertaining to the office consultation that he had.

EXAMINER GOLDBERG: Excuse me, Mr. Partridge. Since you are now quoting someone who is not present, I wish to ask Mr. Martin

8 whether he has any objections to these statements by Mr. Partridge, if he is raising any question concerning their, well, the accuracy of the transmittals, raising any question concerning the fact that we are putting into the record a great deal of material on which you will have no opportunity to cross examine about.

MR. ROBERT MARTIN: Let me respond to that if I may, Your Honor. I know I speak for Marvin Martin as well. We have practiced law with Mr. Partridge for a good number of years in this city and anything he says is the truth so far as we are concerned, and we have no objection whatever to what he may say.

EXAMINER GOLDBERG: I am very pleased to see that spirit among counsel, thank you.

Proceed, Mr. Partridge.

MR. PARTRIDGE: In effect, Dr. Shivel, while he isn't a psychiatrist, he was of the opinion that a hearing in which Mr. Garrett might be subjected to the pressures attended to a hearing might be harmful to this man's health, and the exact phrase I wrote down is that that kind of pressure might destroy this man and might destroy his usefulness to his family. Dr. Shivel said, "I am not saying this will do this, but I say it very well might do this," and that he thought that Mr. Garrett ought to be examined by a psychiatrist and actually recommended

9 to me a psychiatric group here in Wichita that he preferred as being the group to undertake a psychiatric evaluation. But he thought that this was the kind of humane thing to do, to not run the chance of a hearing which might have this effect, but to have a psychiatric examination before any testimony and intended pressures were put on the

witness. So, I am here today requesting that this matter be postponed and that we be given the opportunity of setting up this psychiatric evaluation and examination and getting a formed opinion out of a psychiatrist before we determine what can or can not be done with this witness.

EXAMINER GOLDBERG: Mr. Martin?

MR. ROBERT MARTIN: My reaction to what Mr. Partridge says is this: First of all, I mentioned earlier, we have absolute confidence in Mr. Partridge's accurately reciting the conversation and we have to rely on what Mr. Partridge said, because, although Mr. Garrett is presently employed by the Respondent, frankly, is serving —

EXAMINER GOLDBERG: Is he back working for the Kansas Refinery?

MR. ROBERT MARTIN: Yes. He is presently employed by Kansas Refined Helium and I asked this morning if his performance was satisfactory. They said it was, but Marvin Martin and myself and the other officers of the company and the employees for that matter have taken care not to — because of the nature of this matter and what was proposed to be offered here in the way of evidence — not to discuss this with Mr. Garrett.

EXAMINER GOLDBERG: Excuse me. May I have on the record, I am not aware of the fact when Mr. Garrett was —

MR. ROBERT MARTIN: Returned to work?

EXAMINER GOLDBERG: — returned to work. Was it pursuant to the injunction, or was it separate and apart from —

MR. ROBERT MARTIN: No, it was pursuant to the injunction. He was one of the two employees that stated he would like to come back to work and he elected to do so, and he was reinstated under —

EXAMINER GOLDBERG: Do you have the dates?

MR. ROBERT MARTIN: I know it is August. I believe he came back to work August 14, 1967.

MR. WACKNOV: I believe this is correct.

EXAMINER GOLDBERG: Thank you. Go ahead, Mr. Martin.

MR. ROBERT MARTIN: And since his reinstatement pursuant to court order, he has performed his duties satisfactorily, and we have no problem — have had no problems at all, but we have not gone into this matter with him informally in preparation for this hearing. The other thing that the record may not show is that the purpose, of course, of this hearing is to take testimony from this witness as to whether he and other witnesses in some of the prior proceedings gave false testimony, and I can well imagine that would create a strain on anybody, whether he is emotionally upset or whether he isn't. It is not going to be an easy matter for him to face.

Under those conditions, as we have no way to evaluate the situation ourselves and we don't and we are perfectly willing to rely on what Mr. Partridge says and the doctor's language that this man could have a nervous breakdown, is a pretty strong medicine as far as I'm concerned. While it is a disappointment, I don't feel I am in a position to object. I just don't think the lawyers ought to do that, but if he wants to take the burden which it will be of having an examination submitted, go take an examination and whatever that entails; we will cooperate.

* * * * *

EXAMINER GOLDBERG: This hearing will be in order.

Ladies and gentlemen, as a result of conference with counsel, this case is now adjourned to June 11, 1968, at 10 o'clock in this courtroom. Any person who has been subpoenaed to attend the trial here today will please return at that time. Is there anything further, gentlemen?

MR. PARTRIDGE: No, sir.

MR. WACKNOV: No, Your Honor.

EXAMINER GOLDBERG: Thank you.

* * * * *

Room 205
Grand Jury Room
United States Courthouse and
Post Office
401 North Market
Wichita, Kansas
Tuesday, September 10, 1968

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10 o'clock a.m.

BEFORE:

SIDNEY D. GOLDBERG, Trial Examiner.

APPEARANCES:

GERALD A. WACKNOV, Esq., Federal Building, 601 East Twelfth Street, Kansas City, Missouri, appearing as counsel for General Counsel.

MARVIN J. MARTIN, Esq., of the firm of Martin, Wooley & Churchill, 458 North Market, Wichita, Kansas 67202, appearing on behalf of George A. Angle, d/b/a Kansas Refined Helium Company, the Respondent in Case Nos. 17-CA-3021 and 17-CA-3021-2.

ROBERT MARTIN, Esq., of the firm of Martin, Porter, Pringle, Schell and Fair, 1111 Vickers Tower Plaza Bldg., Wichita, Kansas 67202, appearing on behalf of George A. Angle, d/b/a Kansas Refined Helium Company, the Respondent in Case Nos. 17-CA-3021 and 17-CA-3021-2.

JOSEPH A. LYNCH, JR., Esq., 735 Ann Avenue, Kansas City, Kansas 66101, appearing on behalf of Oil, Chemical and Atomic Workers International Union, AFL-CIO, the Charging Party in Case Nos. 17-CA-3021 and 17-CA-3021-2.

ROBERT N. PARTRIDGE, Esq., of the firm of Foulston, Siefkin, Powers, Smith & Eberhardt, Suite 600, Fourth National Bank Building, Wichita, Kansas 67202, appearing on behalf of Thomas B. Barrett, a proposed witness in Case Nos. 17-CA-3021 and 17-CA-3021-2.

* * * * *

31

PROCEEDINGS

TRIAL EXAMINER GOLDBERG: This hearing will be in order, gentlemen.

This hearing is a continuation of the formal trial in the matter of George A. Angle, d/b/a Kansas Refined Helium Company and Oil, Chemical and Atomic Workers International Union, AFL-CIO, Case Nos. 17-CA-3021 and 17-CA-3021-2. This hearing was recessed on April 24 to resume in June and subsequently set for today. The purpose of this hearing, as you all know, is to take the testimony of Thomas Garrett. I will take such testimony as may be the equivalent or the substitute thereof.

We will take the appearances again.

We all know Mr. Wacknov.

MR. LYNCH: Joseph A. Lynch, Jr., International Representative, AFL-CIO, on behalf of Oil, Chemical and Atomic Workers.

TRIAL EXAMINER: On behalf of whom?

MR. LYNCH: Oil, Chemical and Atomic Workers.

MR. PARTRIDGE: Robert N. Partridge, on behalf of the witness Thomas Garrett.

TRIAL EXAMINER: I know Mr. Martin.

Now, Mr. Martin, have you produced a witness for testimony?

MR. MARVIN MARTIN: We have asked that a witness be pro-

32 duced for testimony, Mr. Goldberg. It is my understanding both in a prior conversation with you and with Mr. Partridge that you wish

to take up the preliminary question first as to the medical and physical ability of this witness. I request that production of the witness be withheld until such time as this preliminary matter has been taken care of.

TRIAL EXAMINER: I am aware of it; it is all on the record.

MR. MARVIN MARTIN: I understand.

TRIAL EXAMINER: Now, Mr. Partridge, will you please make your statement concerning what has happened since the last session of this trial.

* * * * *

44 Whereupon,

DR. AUSTIN ADAMS

was called as a witness by and on behalf of Thomas B. Garrett and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Partridge) State your name and address, please.
A. Austin Adams. My office is at 3420 East Douglas.

Q. Dr. Adams, you are a physician practicing medicine in the State of Kansas, are you not? A. That is correct.

Q. How long have you been practicing this generally?
A. Since 1937.

Q. Do you have any specialty in your practice, Dr. Adams?
A. Yes, I specialized in the practice of psychiatry.

Q. Do you have any formal training that is designed for the practice of this specialty? A. Yes. I had training at the National Naval Medical Center and I was a psychiatrist in the Navy. I had training at the Menninger Clinic for two years as a resident in psychiatry.

45 Q. Do you confine your practice of medicine to the field of psychiatry, Dr. Adams? A. Yes, sir.

Q. When was it, Dr. Adams, that you first saw Thomas Garrett?
A. When he was first admitted to the hospital on May 11, 1968.

Q. What were the circumstances leading up to your seeing him on May 11? A. That I had been notified by his doctor, Dr. Shivel in Great Bend, that he was in need of examination. He had been given an appointment and he had failed to show up. He had learned that he had gone to Larned State Hospital and had been there two or three days. He was transferred then to Wesley Hospital.

Q. How long was he in the hospital at Wesley Medical Center in Wichita? A. He was discharged on June 4, 1968.

Q. Since June 4, 1968, have you from time to time seen him in your office? A. Yes, I have seen him.

TRIAL EXAMINER: Excuse me, doctor, will you speak a little louder.

A. (Continuing) I went out of the country in July.

Q. You saw him from time to time as an out-patient in your office until July? A. That is right.

46

Q. Dr. Adams, describe for us, if you would, Mr. Garrett's condition at the time you saw him originally in Wesley Medical Center early in July. I don't mean to confine it specifically to the first visit. If there are ways of describing this by combining the first several visits, why, do so. I want the record to be such that it will establish what generally you saw and found regarding Mr. Garrett during his initial hospitalization. A. Well, he was very anxious and tense at this time. We visited about what had been going on. One of the things that seemed to be bothering him was the things he felt were happening to him. These included feelings that he was being watched, cars were following him and even in the hospital things were going on that were peculiar. He felt, for example, that a string that had been hanging from the ceiling that someone had hung some paraphenalia on was left there as an indication that he was going to be hung. He had an idea that the other person in his room had been placed there as a spy and that they were all part of some sort of plot. He even wondered if the nurses were part of this. He even wondered if I was not part of this. This made it rather difficult

for him to think out some of these feelings because of this distrust. I did not push him too much on bringing out these particular things.

47 He was concerned about the fact that he had been in court and he was uncertain as to what he had said and whether he had done the right thing or not. We began to observe him and give him medicine for this because I felt that he was actually suffering from a condition. I would diagnose it as a schizophrenic reaction and paranoid type. Well, we gave him medicine for this and he began to respond.

Studies were made of him, including psychological testing, which indicated that he had this particular condition. He also felt that one of the reasons why he really felt he developed this particular type of illness was due to the fact that he had a certain type of personality that was characterized by conscientiousness and a tendency to be very much afraid about what would happen to him. The psychological testing did confirm this. It was my opinion that he should be under treatment until these ideas did subside. After this we followed him along and felt that he was continuing to improve. Finally, the question came up as to whether he could go back to work or not. I was very aware of the opinion that I had formed in this case because I was also called upon to write a letter saying whether or not he should testify in court. I said that I felt that he was able to go back to work, but that he should not testify in court. My thinking on that was, as best as I knew from the history that

48 I had, that he had liked his work and had done well in his work and that this would be one way of trying to help him get back to the routine in which he had been functioning.

It is my aim in many of my patients that I have to get them out of the hospital and functioning in their old routine if it is at all possible and if that routine would not be detrimental to their condition. I also maintained that it was not his work that was causing the particular reaction that he had, that his reaction was because he had been involved in a situation where he had to testify and maybe he was not telling the truth or he

had not told the truth or he was hurting people and he had a great concern about this and this was the nature of the precipitating events that caused this reaction at this particular time to occur.

TRIAL EXAMINER: Does that complete your statement about the condition you found Mr. Garrett in when you finished your first examination?

THE WITNESS: Yes.

TRIAL EXAMINER: Go ahead, Mr. Partridge.

Q. (By Mr. Partridge) Doctor, the various symptoms that you described to us briefly in your remarks are the symptoms of this abnormality or illness that you mentioned? A. The symptoms that he was being followed and there were things in the room are symptoms of a paranoid schizophrenic.

49 Q. Paranoid schizophrania, is that a disease? A. It is a psychiatric illness or reaction that can be recognized and is well known.

Q. So, in layman's terms, would you describe it as being a mental illness? A. Yes, sir.

Q. Is this diagnostical, this mental illness? A. Yes, sir.

Q. In other words, there was no question from your examinations, testing and so on, that this man has this mental illness?
A. That is right.

Q. And did he, following his hospital routine and the treatments in your office, did he improve and were these symptoms dissipated?
A. Well, the symptoms had subsided enough that I felt it was now permissible for him, considering his safety and the safety of others, that he could be dismissed from the hospital.

Q. All right. Now, the question is is he cured of this mental diagnosis that you made? A. I feel that he is in what is known as a social remission but is not cured.

Q. In other words, the underlying problem of this schizophrenia still exists as a latent matter, is that correct?

50 A. Yes, sir, with the possibility that a flare-up could occur.

Q. In the hearing here, doctor, we are talking about the question of his testifying. You earlier related to us that this was a source of the uprising of the symptoms, I believe. A. I felt that this was a precipitating factor of his illness.

Q. Let me ask you this question, doctor. In your opinion, if this man were to be required to testify in these proceedings, would this likely bring about a reoccurrence of this uprising of symptoms this man had before? A. It was my opinion the possibility of precipitating a return of the illness would be so great that I would state that I felt he should not testify.

Q. As his physician — and you are his physician, I mean, you have undertaken the care and treatment of this man, have you not, sir? A. Yes, sir.

Q. As his physician, what is your recommendation as far as a continued remission of these symptoms, the continued stability of this man that he apparently now enjoys? A. Well, he should be observed and he should be continued on his medication.

Q. But what about his testifying here?

51 A. I felt that he should not testify.

Q. Why? A. Because I was afraid if this was the situation that precipitated the illness the first time he was in the hospital that the danger of his testimony precipitating another illness would be so great that I would recommend that he should not do this.

Q. Doctor, as his physician and as a psychiatrist, I would like for you to elaborate a bit further in connection with a remark that you made about his conscientiousness, his wanting to try and tell the truth. What part did that play in this overall fear and apprehension that he has towards testifying, apparently? A. Well, I think it is part of his basic personality structure that he always tries to do a pretty good job and is a conscientious person. I felt this was because of his basic personality trait, this was one of the reasons why this particular incident was so

upsetting to him. He had difficulty in remembering whether he had told the truth or not and because he also had difficulty in determining whether or not what he had said really had actually happened or had been a product of his fantasy. He was partially aware that some of the things he told me about seemed a little peculiar, but he was unable to determine whether or not they were really true or not true.

52 For instance, the business of his hanging in the hospital room, he said that he knew this was not a real noose and that probably what it was was somebody had left a string there, but he was also unable to determine if maybe somebody hadn't put that there to remind him that he was going to be hung or he was going to be persecuted.

Q. So, is the question about his apprehension toward testifying brought about by his present inability really to sift in his own mind between what really is fact and what is fantasy? A. Well, I think at this particular time he is able to do that, but I would think that if he got under stress again over this particular thing he might not be able to do that.

* * * * *

53 CROSS EXAMINATION

55 Q. (By Mr. Robert Martin) * * * And you were also aware, and Mr. Garrett told you, that if called to testify, some of the testimony that he would be required to give would contradict at that plant who had testified? A. I don't recall him telling me that.

Q. Do you recall your testifying in the United States District Court on or about August 30, 1968? A. Yes.

Q. Let me ask you if you recall having been asked these questions and making these answers. I will start on Page 45.

"Q. That is at the plant. Do you know that some of the people working out there are people whose testimony he may have contradicted?

"A. Yes.

"Q. In court?

"A. Yes."

Were you asked those questions and did you give those answers?
A. Yes, I did.

Q. And on the next page:

"Q. Do you know that some of the people out there with whom he is going to be placed back in daily contact are people that he contradicted on the stand whose testimony under oath disagrees with his?

56 "A. I knew that."

A. Yes, sir.

Q. Now, he did tell you about that, did he not? A. What was the question?

Q. He did tell you about that, did he not? A. He told me about the people at the plant having testified differently than he that were on the other side of the question.

Q. What did he say about that? A. I do not recall. I was not really going into very much detail about this particular situation because this, I felt was a very anxiety producing situation and that I was aware that this had caused his trouble and my job was to help him try and get over this. I did not press and I did not go into detail about that.

Q. Well, doctor, your concern here, at this point at least, is not that Mr. Garrett's testimony so much is going to be inaccurate or that he should be disqualified as a witness because he cannot perceive fact from fantasy, but rather that if he is compelled to testify in this dispute it might precipitate another episode, is that correct? A. That is correct. I think at one time I did state that he felt he might perjure himself because he was having this difficulty. However, I think if he had to testify and the illness came back, that particular situation would come back.

57 Q. In other words, if he were required to testify and he became ill, then, you think he might perjure himself? A. I am afraid so.

Q. But if he were to ask to testify and he did not become ill, then, I think you have already said both in federal court and here that

you would rely on his answers. A. I don't think I said that in federal court, but I think I would rely on his answers.

Q. You are willing to say that now? A. Yes, I think I would rely on his answers.

* * * * *

58 Q. (By Mr. Robert Martin) Do you have any information, doctor, as to previous occasions in which Mr. Garrett has testified and what
59 has been the effect on him? A. I have no knowledge of that.

Q. You don't have any at all? A. I do not.

Q. I beg your pardon? A. None that I recall at this moment.

Q. Did you ask him anything about that? A. Well, I have testified that I really did not get into this any more than I felt was necessary because I felt that this was a precipitating thing that was stirring him up and I didn't ask him any questions about it.

Q. I see; but it would be important to know this information in forming a judgment about what would be the effect of any further testimony? A. Well, it would certainly substantiate an opinion that you had if he had been upset and perhaps if he had not been upset that might influence your judgment about what you would say. However, it seemed to me that there was a direct relationship between the involvement in this particular situation and the testimony in court that was directly related to this illness.

* * * * *

79 TRIAL EXAMINER: Dr. Adams, you talked about his inner conflict, referring to the conflict concerning both the subject matter of the case we are dealing with now and the matter of procedure that is customary under oath. Can you give us your judgment as to whether that conflict could be resolved by him sufficiently to testify or would it result, in effect, in a paralysis of his ability to testify?

THE WITNESS: I think the possibility of his ability to testify
80 would be a result of blocking so that he would not remember. That is a great possibility.

TRIAL EXAMINER: Do you think — I hope this is the final question — do you think the mere machinery of bringing this man to court and asking him to testify under oath would have any effect upon his condition?

THE WITNESS: Yes, it was my fear that this might precipitate another episode.

TRIAL EXAMINER: How does this condition manifest itself? Can you give us a very general description? I know there is certain material in this record that has told me some things, but I would prefer not to refer to them. I prefer to hear your opinion as to what might result if he were asked to testify and, second, if he came to testify.

THE WITNESS: First of all, if he were asked to testify, I think that this would be a very frightening thing in itself, that his anxiety would mount and, as a result of that anxiety, then, he would begin to anticipate what he would say and he would begin to worry about whether he was going to tell the truth or not, whether he had told the truth or not, and if he could really distinguish between the two of these, so that this would cause more anxiety.

The function of a schizophrenic process, in my opinion, is to try to do something to stop the anxiety, and these ideas in psychiatric terms are called paranoid, which means when you have a conflict within
81 yourself and it causes so much anxiety that you try to avoid the anxiety by saying, no, "It's not me; it is somebody else. They are persecuting me." So, to try to avoid this anxiety, they come up with the idea, certain types of people do, this is a paranoid element.

I would think if he were called upon to testify, his anxiety would mount to the level that there would be a great possibility of him going back to saying, "Now, somebody is after me. They are doing this again," and throw the whole thing into a jumble.

* * * * *

82 Q. (By Mr. Robert Martin) * * * Is it a fact that when called as a witness for the government, and at that time he had the same control he has now, he took the stand and testified in a criminal prosecution against Mr. Angle without apparently having a psychotic episode, sug-

83 gesting to you that the lack of the psychotic episode might depend upon who causes him stress?

MR. WACKNOV: Your Honor, I make the same objection.

TRIAL EXAMINER: Overruled.

Suppose you change that by asking him if that would affect his opinion, Mr. Martin.

Q. (By Mr. Robert Martin) Would it? A. It would not affect my opinion even though I think I would have to say that it seems to me he testified in court he did not have an episode. I do not know why the first episode did not precipitate this but, in my opinion, I know the second one did in court. With this other involvement, I think it would be very risky to subject a person of this particular type of reaction to this situation again.

* * * * *

92 Whereupon,

DR. C. J. KURTH

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Robert Martin) Give us your name, please?

A. Dr. C. J. Kurth, K-u-r-t-h.

Q. Doctor, you are a practicing psychiatrist? A. Yes, sir.

Q. And a physician? A. Yes, sir.

Q. How long have you been engaged in the practice of medicine?

A. Since my graduation from medical school in 1935.

Q. How long have you specialized in psychiatry? A. Since the completion of my residency in 1940.

93 Q. Very briefly, what special training have you had in psychiatric medicine? A. It started with three years of residency training in neurology and psychiatry in Halstead, Kansas, followed by special training and treatment of mental illnesses, specifically, insulin therapy in Stockton State Hospital, Stockton, California, followed by treating and the treatment of depressive reaction with electrical therapy and with the Mayo Clinic in Rochester, Minnesota, specifically, Rochester State Hospital, which in those days was their treatment center. Following this, I took training at the University of Minnesota extension course in the neurology part of it, and have been qualified as a Kenny therapist in neurological polio and the disease of polio under Sister Kenny.

Q. Doctor, when did you first see Thomas Garrett? A. He was first seen in my office July 15, 1968.

Q. During the course of your examination or examinations of Mr. Garrett on that date or subsequently, did you interview him? A. Yes, sir.

Q. Did you also administer or cause to be administered to him certain psychological tests? A. Yes, sir.

Q. Would you describe as briefly as you can the interview technique and the treatment techniques that you applied?

94 TRIAL EXAMINER: Do we need to know the techniques? The man is qualified; I'm not going to judge whether he is doing it right.

MR. ROBERT MARTIN: I will withdraw that foundation question.

Q. (By Mr. Robert Martin) Would you tell me, please, what your diagnosis and findings were with respect to Mr. Garrett and particularly with respect to whether Mr. Garrett could be called as a witness to testify in this proceeding? A. Well, I did research material on his background and was able to obtain records of hospitalization that he had had in 1963 in Victoria, Texas, which gave me confirmatory evidence that he was of a schizophrenic personality. I felt, referring to the second part of your question, that at the time I examined him

that he was still functioning in the mid-high-average I.Q. range, which indicated to me that he would be capable of testifying because he was not in a psychotic state.

Q. At the time or times that you saw him, he was not in a psychotic state? A. Yes, sir.

Q. You were present and heard Dr. Adams' testimony?
A. Yes, sir.

Q. By psychotic state, you mean what Dr. Adams called a psychotic episode? A. Yes, sir.

95 Q. The terms mean the same thing? A. Yes, sir.

Q. What would be your opinion and diagnosis with respect to Mr. Garrett's reliability or the effect, if any, upon his condition of health, either mental or physical, if he were called as a witness? A. Well, as of the time I saw him, he was very capable of defending himself. He was clear, articulate, he recalled, he had no trouble with details. Whether he was or was not on medicine Dr. Adams alluded to, I do not know, but I felt he was in contact with reality.

Q. Would you regard his statements as reliable? A. I did then, yes, sir.

Q. Do you have any medical opinion or best medical judgment as to whether or not being called as a witness, or as the Examiner has put it, the court procedure of being called, required to appear in a place on the stand to testify — A. I think it would be quite hypothetical. I believe at the time I saw him he could testify.

MR. ROBERT MARTIN: I believe that's all, Doctor.

TRIAL EXAMINER: Mr. Partridge, do you wish to examine the witness?

CROSS EXAMINATION

Q. (By Mr. Partridge) Doctor, I turned over my copy of your report to Judge Brown. May I see it, please, your office copy of it?

96 In connection with the possible testimony of Mr. Garrett in these proceedings, Dr. Kurth, you do agree with Dr. Adams that the placing of Mr. Garrett on the witness stand could break down this adjustment mechanism that he apparently was experiencing at the time you saw him in July of 1968? A. It is a possibility.

Q. And this same testimony could precipitate a psychotic episode, could it not? A. It is a possibility.

* * * * *

97 Q. (By Mr. Partridge) I hand you what has been marked by the reporter as Exhibit No. 1 and ask you, sir, if that is a photocopy of your entire report to me covering your examination of July 31, 1968?
A. Yes, sir.

* * * * *

98 REDIRECT EXAMINATION

99 Q. (By Mr. Robert Martin) * * * Doctor, are schizophrenics of the condition you found Mr. Garrett in rare? A. No, sir.

Q. These people go about daily lives and hold down jobs and become in various situations which produce stress, do they not?
A. Yes, sir.

* * * * *

GENERAL COUNSEL'S EXHIBIT NO. 1-G

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION

GEORGE A. ANGLE, d/b/a
KANSAS REFINED HELIUM COMPANY

and

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO

Cases Nos. 17-CA-3021
and
17-CA-3021-2

ORDER CONSOLIDATING CASES,
COMPLAINT AND NOTICE OF HEARING

It having been charged in Cases Nos. 17-CA-3021, and 17-CA-3021-2, by Oil, Chemical and Atomic Workers International Union, AFL-CIO (herein called the Union) that George A. Angle, d/b/a Kansas Refined Helium Company (herein called the Respondent) has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C. Sec. 151, et seq. (herein called the Act), the General Counsel of the National Labor Relations Board, (herein called the Board), by the undersigned Regional Director for the Seventeenth Region, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102. 33 of the Board's Rules and Regulations, Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated for hearing, the General Counsel of the Board, on behalf of the Board, by the undersigned

Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended:

I

The charge in Case No. 17-CA-3021 was herein filed by the Union on September 21, 1966, and served by registered mail upon the Respondent the same date. The charge in Case No. 17-CA-3021-2 was filed by the Union on September 22, 1966 and served by registered mail upon the Respondent the same date. An amended charge in Case No. 17-CA-3021-2 was filed by the Union on November 1, 1966, and served by registered mail upon the Respondent the same date.

II

(a) The Respondent operates a sole proprietorship engaged in the business of refining and selling helium gas from a facility (herein called the plant) located immediately outside the corporate limits of Otis, Kansas.

(b) The Respondent annually sells in excess of $500,000 worth of helium gas, and annually sells in excess of $50,000 worth of helium gas to customers located outside the State of Kansas.

(c) The Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Sections 2(6) and 2(7) of the Act.

III

The Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

IV

(a) All production and maintenance employees at the Respondent's plant, including instrument men and plant-clerical employees, but EXCLUDING office-clerical employees, casual and temporary employees, professional employees, guards, and supervisors

within the meaning of the Act; and, employees of other operations of George A. Angle, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(b) On or about June 23, 1966, a majority of Respondent's employees, in the unit described above in paragraph IV(a), designated and selected the Union as their representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(c) At all times since June 23, 1966, and continuing to date, the Union has been the representative for the purpose of collective bargaining of the employees in the unit described above in paragraph IV(a) and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in the said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(d) Commencing on or about June 29, 1966, and continuing to date, the Union has requested, and is requesting, the Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive bargaining representative of all the employees of the Respondent in the unit described above in paragraph IV(a).

(e) Commencing on or about June 29, 1966, and at all times thereafter, the Respondent has failed and refused, and continues to fail and refuse, to meet, discuss, and negotiate in good faith with the Union with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive collective bargaining representative of all the employees of the Respondent in the unit described above in paragraph IV(a).

V

At all times material herein the following - named persons have

been agents of the Respondent, occupying the position set opposite their respective names, and supervisors within the meaning of Section 2(11) of the Act:

George A. Angle - Owner
Henry Tyler - Plant Manager and Operating Superintendent

VI

The Respondent, acting by and through its officers, agents and representatives named below, at the plant, on or about the dates shown below in 1966, did:

(a) Interrogate employees concerning their Union activity - Henry Tyler, July 1; George A. Angle, September 13 through 16.

(b) Threaten employees with the withholding of fringe benefits should the Union win the election - Henry Tyler, July 15.

(c) Threaten employees with discharge because of their Union activity - George A. Angle, July 5 and September 13 through 16.

(d) Threaten to close the plant should the employees join the Union or vote the Union in - George A. Angle, July 5.

(e) Interrogate employees regarding their vote in the Union election - George A. Angle, September 13 through 16.

(f) Grant wage increases to employees in order to influence their vote in the Union election - George A. Angle, September 21.

VII

On or about September 20, 1966, the Respondent did discharge Arel Rodgers, Russell Sims, Dwayne Johnson, Russell Bishop, Thomas Garrett and John Harris because of their membership in and activity on behalf of the Union.

VIII

By the acts, and by each of them, described above in paragraphs IV(e), VI and VII, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees

in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IX

By the acts, and by each of them, described above in paragraph VII for the reason stated therein the Respondent has discriminated, and is discriminating, in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization and has thereby engaged in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.

X

By the acts, and by each of them, described above in paragraph IV(e), under the circumstances set out above in paragraph IV(a), (b), (c) and (d), and paragraphs VI and VII the Respondent has failed and refused, and is failing and refusing, to bargain collectively in good faith with the duly designated and selected representative of its employees and has thereby engaged in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

XI

The acts of the Respondent complained about above, and each of said acts, occurring in connection with its operations described above in paragraph II, severally as well as jointly, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XII

The acts of the Respondent complained about above constitute unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), 8(a)(3), 8(a)(5), 2(6), and 2(7) of the Act.

PLEASE TAKE NOTICE that on December 8, 1966, at 10:00 a.m. (CST), at

Police Court Room
Municipal Auditorium Building
Great Bend, Kansas

a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's said Rules and Regulations, the Respondent shall file with the said Regional Director, an original and four (4) copies of an answer to said complaint within ten (10) days from the service thereof, and that, unless Respondent does so, all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated: November 16, 1966 /s/ Martin Sacks
Regional Director
National Labor Relations Board
Seventeenth Region
610 Federal Building
601 East 12th Street
Kansas City, Missouri 64106

(SEAL)

STATEMENT OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE CASES

The hearing will be conducted by a Trial Examiner of the National Labor Relations Board in accordance with the provisions of the National Labor Relations Act, the Administrative Procedure Act, and the Board's Rules and Regulations. Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Trial Examiner for his approval.

All mater that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Trial Examiner specifically directs off-the-record discussion. In the event that any party wished to make off-the-record statements, a request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the

Trial Examiner, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Trial Examiner may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Trial Examiner who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102. 42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Trial Examiner will be considered unless received by the Chief Trial Examiner in Washington, D. C. (or, in cases under the San Francisco, California branch office of Trial Examiners, the Associate Chief Trial Examiner in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Trial Examiner or Associate Chief Trial Examiner, as the case may be. All briefs or proposed findings filed with the Trial Examiner must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Trial Examiner will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof

to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Trial Examiner's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Trial Examiner's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102. 46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Trial Examiner will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

GENERAL COUNSEL'S EXHIBIT NO. 2-B

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
Otis and Wichita, Kans.

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY 1/

Employer

and

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO

Petitioner

CASE NO. 17-RC-5126

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 2/

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds: 3/

1/ The names of the Employer and the Petitioner appear as corrected at the hearing.

2/ The various motions and contentions made by the parties are disposed of in accordance with this Decision and Direction of Election.

3/ At the hearing, witness Rodgers prepared, at the request of Counsel for the Employer, a sketch of the plant site here directly involved, showing the locations of various facilities on the plant site in relation to the plant itself. This sketch is hereby received in evidence as Employer's Exhibit 9.

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees at the Otis, Kansas, plant of George A. Angle, d/b/a Kansas Refined Helium Company, including instrument men and plant-clerical employees, but EXCLUDING office-clerical employees; casual and temporary employees; professional employees, guards, and supervisors within the meaning of the Act; and, employees of other operations of George A. Angle. 4/

4/ George A. Angle is an individual engaged in various aspects of the gas and petroleum industry. He operates the several aspects of his business under separate trade names, such as, in addition to the above-captioned trade name, Red Tiger Drilling Company, Great Plains Drilling Company, Red Tiger Truck Company, Red Tiger Cat Company, Red Tiger Grader Company, Hays Tank Service, Frontier Oil Company, and Comanche Supply Company. There is also a pipeline, controlled, operated, and apparently owned by Angle. The total personnel complement of all these operations approximates 100, some 26 of whom are employed in the operation here directly involved, that is, Kansas Refined Helium Company (hereinafter, the plant), located a short distance outside of the corporate limits of Otis, Kansas. The operations conducted under trade names other than Kansas Refined Helium Company are engaged in exploration for gas and oil, the drilling of wells, the completion of productive wells, the purchasing of pipe for wells, the transportation of equipment, certain grading

4/ (Continued) operations, and the hauling of water to the various sites. Some of these operations also contract for the rendition of services to operations not connected with Angle. Angle maintains his general office at Wichita, Kansas, from which he directs and administers all his operations. He controls labor relations throughout his entire enterprise, and working conditions are generally uniform, with variances depending on the nature of the particular work to be performed.

The Petitioner seeks a production and maintenance unit limited to the plant. The Employer contends for an employer-wide unit. In addition, and apparently contrary to the Petitioner, the Employer would include two individuals (Joseph Riedl and Charles Myers) and exclude as supervisors four others designated as senior operators in the plant (Harry Harms, Jimmie Ham, Russell Sims, and Arel Rodgers).

Contrary to the Employer and in agreement with the Petitioner, I find that the smaller unit, limited to the plant is appropriate, although an employer-wide unit might conceivably also be appropriate. The record shows that there is no interchange between the plant employees on the one hand, and employees performing work in other operations of the Employer on the other. The plant employees receive no assistance from other employees of the Employer, and the record indicates that certain plant employees have assisted in the unloading of pipe for Red Tiger Drilling on one occasion only, and this was a matter of a few hours. While the record also indicates that plant employees might deliver materials to wellsites, there is no evidence, either that this has been done, or that it would be a matter of some regularity; moreover, this would be no more than could be expected in a situation where one individual controls several operations or related companies. (That a welder employed at the plant on one occasion performed some welding on a fence located on a farm owned by Angle, is immaterial.) Moreover, the record shows affirmatively that plant employees are hired by the plant manager, who exercises the hiring function for the plant only, and that the plant has its own supervisory structure. I find that the plant employees as a group have interests separate from those of other employees of the Employer, and that they constitute a separate unit appropriate for the purposes of collective bargaining.

Riedl and Myers will be excluded as temporary employees. Both are students. While one of them worked in this operation during 1965, and both are working full time during the current summer vacation, they are expected to return to school this fall, and there is no indication, other than speculation, that they will return to work in the unit here involved at a later time.

DIRECTION OF ELECTION [5]

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period

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[4] (Continued) The senior operators will be excluded as supervisors within the meaning of the Act. The record indicates that the plant operates on an around-the-clock basis, utilizing three shifts, from 8:00 a. m. to 4:00 p. m., 4:00 p. m. to midnight, and midnight to 8:00 a. m. Each shift is staffed by one senior operator and two junior or assistant operators. The maintenance department works from 7:00 a. m. to 3:30 p. m., instrument men from 8:00 a. m. to 4:30 p. m., and the one plant clerical from 8:00 a. m. to 5:00 p. m. The senior operators receive at least 85¢ more per hour than the junior operators and have been told by the Employer that they are part of management. They have authority to shut down operations when this is indicated, and they have done so. While the junior operators are apparently well qualified to perform their duties, they may perform certain operations only when so directed by the senior operator on duty. Moreover, during the second and third shifts, the senior operators work without anybody possessing greater authority being present. In view of the foregoing and the record in its entirety, including the Employer's brief, I conclude and find that the senior operators responsibly direct the junior operators working with them, and that in this connection they are required to, and do, use independent judgment.

The parties' stipulation that general manager Norman Kline, plant manager, W. E. Owens, plant engineer Henry Tyler, and maintenance engineer John Stiff are to be excluded as supervisors is noted and approved.

[5] An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 610 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106, on or before September 1, 1966. Under Board Directives,

immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether (or not) they desire to be represented for collective-bargaining purposes by

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO

Dated August 25, 1966

at Kansas City, Missouri

/s/ Martin Sacks
Regional Director, Region 17

5/ (Continued) no extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. Excelsior Underwear, Inc., 156 NLRB No. 111.

GENERAL COUNSEL'S EXHIBIT NO. 2-E

Received Sept. 21, 1966

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FM HOWARD W KLEEB ACTING EXECUTIVE SECRETARY NATIONAL LABOR RELATIONS BOARD WASHINGTON DC/NLRB/

TO RUCHMCI/1/OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION DISTRICT NO 5 ATT: ROBERT BICKEL SUITE 719 MCBIRNEY BUILDING 8 EAST THIRD ST TULSA OKLAHOMA

BT

RE: GEORGE A. ANGLE, D/A/B KANSAS REFINED HELIUM COMPANY, 17-RC-5126

IT IS HEREBY ORDERED THAT PETITIONER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION BE, AND IT HEREBY IS, DENIED AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING REVIEW EXCEPT AS TO THE SUPERVISORY STATUS OF THE SENIOR OPERATORS. AS SUCH ISSUE CAN BEST BE RESOLVED BY THE CHALLENGE PROCEDURE, THE REGIONAL DIRECTOR'S DECISION IS AMENDED TO PERMIT THE SENIOR OPERATORS TO VOTE SUBJECT TO CHALLENGE. BY DIRECTION OF THE BOARD:

BT

GENERAL COUNSEL'S EXHIBIT NO. 4

8101 Mead St.
Wichita, Kansas 67216
June 20, 1966
Phone: 316 JA 2 1384

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kansas Refined Helium Company
Otis, Kansas 37365

Attention: Mr. Buddy Owens, Plant Manager

Gentlemen:

The Oil, Chemical and Atomic Workers International Union now represents a majority of the Production and Maintenance employees of the Kansas Refined Helium Company at its Otis, Kansas, plant.

We are willing, and now offer, to meet with you or your representatives, together with myself and a committee from your employees at its Otis plant for the purpose of negotiating a collective bargaining agreement covering wages, rates of pay, hours of work and other conditions of employment of employees in the above unit.

We are hopeful you will see fit to advise us of time, date and place such meeting can be arranged for the purpose of inaugurating negotiations and that such negotiations will result in a collective bargaining agreement that will be of mutual benefit to you and your employees.

Sincerely yours,

Oil, Chemical and Atomic Workers
International Union

Hager Patton, International
Representative

GENERAL COUNSEL'S EXHIBIT NO. 5

KANSAS REFINED HELIUM COMPANY
1720 Wichita Plaza, Wichita, Kansas 67202

July 6, 1966

Mr. Hager Patton
International Representative
8101 South Mead
Wichita, Kansas 67216

Dear Mr. Patton:

This will acknowledge receipt of your letter of June 29, 1966, directed to Mr. Buddy Owens at Kansas Refined Helium Company, together with a copy of your letter to Mr. Martin Sachs, Regional Director of the National Labor Relations Board, dated June 30, 1966, and a copy of the Petition for Certification which you filed with his office.

In view of your Petition and the fact that we do not believe that a majority of our employees in the proper bargaining unit are in favor of the Union, we will proceed to handle this matter through an election conducted by the National Labor Relations Board. In this the employees can make their choice by secret vote.

Sincerely yours,

KANSAS REFINED HELIUM COMPANY

/s/ George A. Angle

GAA:ck

cc: Mr. Martin Sachs, Regional Director
Region #17
National Labor Relations Board
1200 Rialto Building
906 Grand Avenue
Kansas City, Missouri 64106

GENERAL COUNSEL'S EXHIBIT NO. 6

KANSAS REFINED HELIUM COMPANY

1720 Wichita Plaza, Wichita, Kansas 67202

September 19, 1966

Mr. Russell L. Bishop
Otis, Kansas

This letter is to advise you of your termination of employment with me. I am terminating your employment for some of the following reasons.

My entire life's work is at stake in the debts which I have accumulated in the gas wells, pipeline, plant and other miscellaneous items which are all combined in my KRH company.

Since I started my company over 12 years ago, you are one of over 100 employees. My personal peace of mind with almost all of these other employees has been one of friendship and, in my mind, on their part, unquestioned dedication and loyalty to me, or better stated, to the common cause of the growth of the company.

I feel that you do not feel the same way as the other employees I have just described. You are working for me, but are dissatisfied with what you consider major, or petty, items which cause your dissatisfaction. I feel that in your mind you believe that you are absolutely justified in not cooperating with me or my other employees as far as fitting into this group or getting along with the others. In fact, you are adamant to the point you do not want to take orders from me or anyone else who works for me.

Further, you are completely insistent that I am going to change my lifelong concept, my business and my relationship with the other 100 employees, or else you are going to remain malcontent and dissatisfied in your job, and perhaps, not even do me the favor to continue to work for me.

I am terminating your employment with me as a favor to both of us. I have never and will never allow anyone to work for me who is dissatisfied, malcontent, feels he is doing me a favor, refuses to accept my leadership in running my company. By terminating your employment

with my company, you can go and seek employment which in your mind will be absolutely perfect and have absolutely no problems, no matter how petty, which will make you dissatisfied. For myself, I will certainly feel much better knowing I have no dissatisfied employees working for my company.

Sincerely yours,

KANSAS REFINED HELIUM COMPANY

/s/ George A. Angle

GENERAL COUNSEL'S EXHIBIT NO. 11

KANSAS REFINED HELIUM COMPANY

1720 Wichita Plaza, Wichita, Kansas 67202

July 11, 1966

Mr. Arel L. Rodgers
Kansas Refined Helium Company
Otis, Kansas

Dear Mr. Rodgers:

The past several days, I have just become aware of the misunderstanding, conflict and the resulting dissatisfaction with my employees at the Kansas Refined Helium Company plant. I am certain that all of this has happened, primarily because you have not been informed on specific facts about your job and just where you stand. I have been keenly aware of this, but since you have started to work for me, I have not had much time to be at the plant to meet and talk with you. Consequently, as a result, I know you have a lot of unanswered questions about me, my company, and more important, about your job and future.

The manner in which the KRH employees has been handled from the very beginning until now, has been entirely different than my way of doing business with all of my other employees. Here is a brief of the reasons.

In 1964, American Messer Corporation was given a turnkey contract to complete the KRH plant by April 1, 1965. AMC proposed also that they operate the KRH plant on a hired contract basis after it was completed. My thoughts on AMC operating the plant on contract were:

1. What better arrangement than the people who built the plant, operating it and making it run.

2. Angle is so pressed for time now, I will let AMC contract to operate the plant for one year, and at the end of one year, decide whether to let AMC continue on another one year operating contract or take over the operations myself.

As I mentioned in my letter to you the first day you came to work, July 26, 1966, with the thought in mind that AMC would probably have a contract to operate the plant, you were interviewed and hired by AMC. Actually, many of you were referred to AMC by my company's Wichita office.

July 28, 1966, when most of you first reported to the KRH plant, you met Norman Klein and he gave you my letter, which as a preference is inserted into this letter. For the few of you who did not commence work July 26, 1965, we are also inserting a copy of that letter.

KANSAS REFINED HELIUM COMPANY

1720 Wichita Plaza, Wichita, Kansas 67202

July 26, 1965

I wanted to write and welcome you on your first day as part of the crew which will operate my plant, the Kansas Refined Helium Company plant.

The purpose of this letter is entirely to welcome you and to give you some information concerning your job.

First, you have been interviewed and accepted as one of the operating crew by AMC personnel. AMC, as the hired contractor, planned and supervised construction of the KRH plant.

The KRH plant, pipeline and gas wells are one of the companies which I own as an individual. This means this is not a corporation with stockholders. There are no partners; I alone own it entirely.

In addition to this KRH plant, as an individual, I own a number of other companies with about ninety employees. Some of them are Frontier Oil Company, Red Tiger Drilling Company, Great Plains Drilling Company, Red Tiger Trucking, Comanche Supply Company, and several other companies.

I have been talking with AMC for some time about plant operations. After AMC completed my KRH plant, which they had been hired to design and construct, then I would hire AMC as a contract operator of the KRH plant. With this thought in mind this is the reason you were contacted and hired by AMC to work as one of the operators of my plant.

As of today, I have not completed by conversations with AMC as to the exact status on which I would hire AMC as a contract operator of my KRH plant.

In order for you to understand your job status, I have always followed the policy of making sure all of my employees know exactly where they stand. With this in mind, I am certain you will want to know these facts:

1. As an individual, I own this plant entirely.

2. As an individual, I will pay your salary.

3. Your salary check may come directly from me as KRH, or indirectly from me, to you, by AMC as the contract operator.

4. It is my thinking that AMC will operate my KRH plant as the hired contract operator, or KRH will operate the plant directly, with AMC hired as the consultants with the responsibility of all facets of plant operations. This is for the obvious reason of AMC's engineering knowledge, plus the fact they designed and built the KRH plant.

5. AMC personnel will direct and instruct you in the operational schooling prior to plant start-up.

6. If you have not, you will meet Norman Klein, a CPA from my Wichita office, who is the Project Manager for me on the KRH plant and the pipeline connecting the gas wells going into the plant.

This letter means to you, personally, that you will work for me directly or indirectly through AMC. Regardless of the details, as far as you are concerned, they still add up like this. AMC has a tremendous reputation as an engineering firm that has designed and constructed a great number of plants all over the world. I personally have spent five years of my time and a great deal of money in this KRH plant, pipeline and gas wells. So now, in the final analysis, the three of us, KRH, Owner; AMC, Builder, and you, as an operator of this plant, are all in the same position. We want this project to come to a successful conclusion, the plant to operate right. Everything else is incidental.

Welcome again, glad to have you, pay attention to AMC in the operating school and I hope to meet you personally soon.

Sincerely,

KANSAS REFINED HELIUM COMPANY

/s/ George A. Angle

GAA:ck

At this time, I was very skeptical about AMC operating my plant, based on their performance on construction and clear down to simple routine paper work which their New York office handled. It seemed very likely to me that AMC might mess up sending your payroll checks, paying plant bills, things that are simple and routine. I knew that my office in Wichita would handle these items correctly and on time because for 12 years, we have done this for now a total of 97 employees, of which you are one, who actually works for the same company, George Angle, regardless of which division (I have given different names to each division so that for my personal information, I can separate my different endeavors in bookkeeping in order to tell on each, which is making money, losing money, and how much).

Since July of 1965, most of you know, and I am sure the rest of you have heard, the continual, drug-out, confused seemingly disinterested efforts that AMC used in completing the plant construction and plant startup. Instead of AMC's contract to construct and startup the plant in one year, it was two years. AMC did not use enough personnel who were capable of starting up the plant they had constructed. I hired and paid for startup personnel from Air Reduction to assist in startup of the plant that AMC had constructed and contracted to startup. Bill Wilson, while he was very nice personally and got along with all of my employees at the KRH plant, was in reality an AMC employee, and taking direct orders from AMC in New York. AMC's order to him were such that he spend all of his efforts working for AMC, and never started working a 100% for me. Working in this manner, Mr. Wilson's ulcers returned and in October, 1965, he had told AMC he wanted to get away from the KRH plant and be returned to the east as soon as possible.

I have never asked any employee of mine to ever do anything that would cause him personally to lose one shred of his self-respect or tarnish, in any fashion, his personal integrity or his opinion of himself. On this point, I am absolutely adamant. As far as I am concerned, I have never and will never ask any employee of mine to do anything I would not do.

During the year you have been employed by me at the KRH plant, I think you can appreciate the fact that I have been awfully short of time. AMC in plant construction, their abortive startup attempts and more recently, the law suit they filed against me (actually, I paid them promptly for their turnkey construction contract. By

July of last year, AMC had received 98% of all money they would ever have due them on the KRH plant. In truth, they violated their contract and were one year late on plant startup. They owe me a great deal more than they could possibly claim due them, and I am filing suit against them). I have borrowed seven million dollars on the gas wells, pipeline and helium plant, and the interest alone costs me about $1,200 each and every day.

I have never forgotten that the KRH group of employees, unlike any of the rest of the employees in my organization over this 12 year period, did not know me, did not know about the company or where they stood and fit in with all of the 97 employees. I have been wanting to get the time to set things right so that I would know you understood you were working for me on the same basis as all of my other employees are. During this past year, I have just flat not had time and I have been working practically 12 hours a day, seven days a week. To give you a clue, in Wichita there are a total of 8 people and me who handle everything and run all of these 97 employees and several companies.

Now that I am suddenly aware of so much confusion and discontent, I am writing you this lengthy letter so as to conserve time before I can visit with you or you are able to visit with some of the other 97 employees in my companies, you can read and re-read this letter for a better understanding of me, my business thoughts and the organization of which you are a part.

So you can have some personal insight to know me and understand the company you work for, here is a brief on me and my company:

Born in Wichita, Kansas.
Parents divorced at 3 years old.
Five years old went to orphanage, Wichita Children's Home.
Mother sick with T. B., County Hospital.

July 11, 1966
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Ten years old - Out of orphanage, working part time jobs, yards, painting houses, stores, odd jobs, etc., looking for steady job.

Twelve years old - Employed regular job, Safeway Grocery, employed continuously since 12 years old. Social Security card issued 13 years old.

(1940) 16 - Started work full time, 44 hours per week in Sinclair Oil Geological Department. Same time started Wichita University, full time course to be a geologist.

(1942) 18 - Joined U. S. Army Air Corps - Combat Fighter Pilot - Mustang P-51 - Europe.

(1945) 21 - Out of Air Corps. Back to Sinclair, full time job, also back to W. U., full time course as Geologist. Flying P-51's in Kansas National Air Guard, Wichita.

(1947) Graduated W. U. Geology Degree. Changed from Sinclair to an independent oil company, Bridgeport Oil Company until 1949, District Geologist. Flying F-84 jets, KNAG.

(1949) Chief Geologist, North American Car Corp., boss same man as at Bridgeport.

(1950) Called to active duty Air Force, Korean War Commander of Jet Squadron - F-84 Thunderjets. Squadron insignia was a Red Tiger.

(1952) Returned from Active Duty with Air Force with $1400 back pay and leave time accrued. Self employed as consulting geologist, sitting on wells for hire.

(1954) Started <u>The Company.</u> First division given name of Frontier Oil Company, no partners, not a corporation, entirely owned, individually, by George Angle. Number of employees started <u>ONE</u>, Mrs. Maxine Starr and me.

July 11, 1966
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*Note -- I have been working since I was 10 years old. Continuously employed since I was 12. Since I was 12, I have myself paid everything for living costs, food, clothes, education and for everything I own and have acquired, every dime of every expense from age 12 through today has been paid by me.

Starting in 1954, through the present, this resume shows the number of employees I had each year in the company. Brief notes are shown with the years that the company employment increased. As you can see, I started out slowly and it grew slowly for the first five or six years, then has gained faster in the last six years.

	Number of Employees in the Company	
1954	1	
1955	8	
1956	22	- Red Tiger Rig #1, Great Plains Cable Tool Rig #1
1957	26	
1958	28	
1959	40	- Red Tiger Rig #2
1960	44	- First Red Tiger Truck
1961	56	- Red Tiger Rig #3
1962	62	- Great Plains Cable Tool Rig #2
1963	65	
1964	70	
1965	85	- KRH added 15 employees to the Company
1966	97	- KRH added 12 more employees to the Company

Each month that any employee works for me, they should be more valuable to themselves from the standpoint of experience with any future jobs with any company, and more direct and important, they should become more valuable to me as well as to themselves. If any employee is not more valuable to me and to themselves as they gain time and experience, in short, they are not learning anything or improving their skills, them I am doing them and myself, a distinct disservice by not letting them go.

Opposite to this, as any employee becomes more experienced and skilled working for me, they become more valuable to themselves, but in

particular and by a greater degree, become more valuable to me. As this happens, I will not let these good people get away. The old saying, "a good man is hard to find" is absolutely true.

From my side of this, after I know someone is a good employee and they have worked. trained, become experienced, especially experienced in working for me, for 1 year or 5 or 10 years, think of the investment, I have in this person. Even though the employee feels he has given me this time as a good, hard working, loyal employee, and in turn, has been adequately paid, or paid even more than they expected, we quit entirely even. When I lose an employee like this who is good and experienced, I am the loser.

It might seem that would be a natural ending, the employee had given fairly of his work and been fairly paid by me for say 5 years, and then quits, so it ends fairly even. Except, I have to hire someone to replace him, and there is no way I can be sure a new employee will be a good employee, and absolutely impossible for me to install 5 years of experience in my company in any new employee. My whole purpose in pointing this point out, is to emphasize to you that the longer you work for me and the more experience you acquire, the more valuable you become to me. This becomes a definite, tangible asset to you, I do not intend to let any good, experienced people get away from me.

By looking at the other employees in my company, of which you are now a part, you can see what a very large percentage have been with me 100% since they were first hired, they also, by comparison to other companies and the same job catagories, have a very high salary.

It is so simple, this thought is a road that runs both ways. I feel I have a deep moral obligation to all of my employees who are loyal and dedicated. Further, the longer they work for me and they make valuable contributions to the company, the stronger I feel this obligation. I feel that all of my employees who have worked for me for a while, say 2 to 12 years, are my friends as well as employees. The longer they are with me and the more experienced they become, I pay them more. Not based on time in service, but because I feel they are more valuable to me, they deserve more pay and what would it cost to me to hire (buy-impossible) 2, 5, 10, 12 years experience as an employee in my company. Running my business with this thought, there are no limits what any employee might make as salary. There are employees working for me now whose salaries are three or four

times as much as the salaries in other companies, for the same job. This bothers me in no fashion. I feel these people have earned and deserved this salary. They are worth this salary to me, so I pay them. I am not concerned with the going fair rate for this same position or job title, the standard or established rate in other companies. Other companies can run their own businesses (pay their employees as little as they desire). We do not have to be concerned with partners, stockholders, or any outsiders suggesting or telling us what we should or must do.

At this point in this letter is inserted a Company Roster of the employees, the division with which they are associated and the years of company service.

George A. Angle — Company Roster

Everyone listed on this roster are in one company owned entirely and individually by George A. Angle. This roster is divided into the different name categories which are used in order to check each separately as to their profit or loss performance. This roster also indicates years of service with the company.

Division Name	Year First Employed	Years With Company
Red Tiger Drilling - Rig #1		
Thomas J. Buffington	1956	10
Harold E. Little	1965	1
Harold Warner	1956	10
Nyland W. Miller	1965	1
Leland O. Coonrod	1960	6
Melville Farmer	1960	6
Charles W. Pratt	1957	9
James J. Blazek, Jr.	1963	3
James R. Leewright	1963	3
Thomas H. Ragsdale	1964	2
Ernest F. Haag	1964	2
Chester R. Watkins	1963	3
Red Tiger Drilling - Rig #2		
Sylvester Fickel	1956	10
Walter J. Oden, Jr.	1960	6
W. C. Ogle	1957	9
Leon W. Funk	1966	
Albert M. Copp	1959	7
William J. Thoman	1966	
Jonathan R. Mayo	1959	7
Raymond D. Mayhew	1959	7
James W. Kaba	1966	
Loren E. Mortimer	1960	6
Floyd C. Tuzicka	1963	3
Kenneth V. Coker	1964	2
Loren Waggoner	1959	7
Red Tiger Drilling - Rig #3		
Fred Damme	1961	5
Ross Crawford, Jr.	1961	5
Raymond E. Burkhart	1961	5
George W. Manwarren	1964	2
Lloyd J. Schlegel	1962	4

Division Name	Year First Employed	Years With Company
Red Tiger Drilling - Dig #3		
David R. Woods	1965	1
D. B. Cox	1961	5
Homer W. Loutzenhiser	1963	3
Howard F. Damme	1965	1
Edwin B. Battershell	1966	
Gail D. Lucas	1961	5
Weldon G. Manwarren	1966	
Drilling Superintendent		
Roy McClure	1956	10
Kansas Refined Helium		
William E. Owens	1966	
Henry Tyler	1965	1
John R. Stiff	1965	1
C. Leon Myers	1965	1
Dwayne A. Johnson	1965	1
William E. Sloan	1965	1
Russell M. Sims	1965	1
Harry L. Harms	1965	1
Arel L. Rodgers	1965	1
Jimmie F. Ham	1965	1
Thomas B. Lynch	1965	1
Jack E. Durbin	1965	1
Gerald L. Julian	1965	1
W. L. Roberts	1965	1
William F. Pickerill	1965	1
Merle G. Smith	1966	
Ronald G. Weinman	1966	
John Wakulich	1965	1
John Harris	1965	1
Thomas B. Garrett	1966	
Corey T. Call	1966	
Dean S. Tittel	1966	
James D. Foose	1966	
Russell L. Bishop	1966	
Harold L. Foos	1956	10
Joseph Riedl	1966	
Charles Myers	1966	
Hays Tank Service		
Clayton J. Engel	1959	7
Herman J. Leiker	1964	2
Gerald Pfannenstiel	1961	5

Division Name	Year First Employed	Years With Company
Red Tiger Truck		
Claude Branch	1959	7
George W. Branch	1962	4
William C. Casper	1966	
Darrell W. Ehrlich	1964	2
John J. Giebler	1966	
William Kuntzsch	1960	6
Hecter C. Nahon	1966	
James L. Smith	1962	4
Glenn E. Ulrich	1960	6
Great Plains Drilling		
Elmer E. Snyder	1958	8
Altha A. Young	1961	5
Carl J. Bealby	1959	7
Chester E. Thurston	1959	7
Frontier Oil		
Maxine V. Starr	1954	12
Norman E. Klein	1962	4
Jean Hollar	1958	8
Vicki Mortensen	1960	6
Betty Maloney	1961	5
Carol Kendall	1965	1-1/2
Harold R. Martin	1963	3
Jimmie Farrice	1966	
Geologists		
Roy R. Kruger	1957	9
Richard Parker	1961	5
Gas Man		
A. F. Pesicka	1958	8
Pumpers		
Paul Sunley	1954	12
Don Kinderknecht	1959	7
Irvin Miller	1957	9
Alois M. Pfeifer	1954	12
Earl Sunley	1961	5
Don Hamel	1966	
Trois Schroder	1962	4

Prior to the addition of the KRH employees to the company, the company's employees totaled 70.

Total years of service 357

Average years for each of 70 employees over 5 years.

Note: In this list of company employees, prior to the KRH division, there has been some turnover. Some employees have left voluntarily with company service time from 2 to 8 years for a number or reasons such as: to get married, pregnant, moving out of state, going back to college. Over the 12 years a surprisingly small number (I can only recall 5 or 6) have been fired. Some have left for a better job. If any employee who works for me can change for a job that will be better for him, which at the time I cannot meet or surpass, I am 100% for them, glad for them and will do everything in my power to help them get the other job. Anything less than this would be unfair to them and would mean I could not respect myself.

Now remember, 12 years ago, I did not start with 70 employees, I started with one. Employees were added as we grew and the jobs were created, so the average of 5 years should not be compared to 12 years. As an example, in 1961, five years ago, we added Red Tiger Rig #3. People on Rig #3 who have 5 years service have been with the company 100% of the time since they were first hired.

In 1961, I had a total of some 56 employees, 5 years later in 1966, 40 of the 58 still work for me, this is 71 ⅐ %. Consider this, of the total of 56, 36 of these people worked on my three Red Tiger rigs, the drilling business is supposed to have a tremendous turnover in people. The employees who are still working for the company that started when their job was created; that is, have worked for me 100% of the time since they started, is even higher. I have never lost any key employee since I started my company 12 years ago.

This point has been and is the strongest single factor in my business growth. One man can only do so much, there is only 24 hours in each day. Good employees that I can count on have made my company grow, and the fact that I know, recognize, show it by salaries as well as other ways, and appreciate this, is the reason these good employees stay with the company. From your standpoint, as an employee of my company in the KRH division, let us look at all the other employees of the company, other than KRH. Most of the KRH group of employees were hired in July, 1965. At that time, under the Mickey Mouse arrangement that I would hire AMC on a 1 year contract to operate the plant, AMC hired you instead of your being hired directly by me, as has always been my policy.

Company employees, other than the ones in the KRH division, show these figures which in turn tell the basic background facts of my company, or any company.

The above facts that show so many of the company employees have worked for me as many years, 100% since hired as they have shows that I must be running things right, or they would not want to stay. You are an employee of the same company. I invite you and encourage you to ask them their opinion of what it is like to work for George Angle for 5, 8, 10 years. They will tell you. I do not know what they will tell you, but I know damn well any of them will not hesitate to voice their opinion. They have always known they could speak their piece to anyone in the company or out of the company, and certainly to me. You KRH people can also, my rules are the same for everybody. If the other employees in the company do not speak up to you, I will be very surprised and disappointed in them. I am sure they know they can.

On the Company Roster, you will note, Harold Foos has 10 years of service with the company. Inasmuch as Harold Foos is the first company employee to make a change to another job in a different division within the company since any KRH employees were added to the company in July of last year, his situation makes an exact illustration of the fact that all of my company employees are in one company and work directly for me. Harold Foos has worked for me for 10 years. Before he started working at the KRH plant in May of this year, he was the No. 2 driller on Red Tiger Rig #2. I probably have not seen Harold personally in the last five or six years. In no fashion whatsoever does this mean that I am not continually aware of what sort of a job he has been doing for me. As I mentioned, all paper work and reports for all employees in all companies end up here in Wichita. There is a daily report from each rig that covers each tour, each driller and his crew. In addition to the daily reports, continually and at the end of each year, the Accounting Department summarizes what each of the three Red Tiger Drilling Company rotary rigs have done, their cost and profits on our drilling contracts for other oil companies as customers for our rigs. I have also been in contact with his superior, the tool pusher who is the No. 1 driller on Rig #2, our Drilling Superintendent, Roy McClure.

I was very surprised when I first learned that he had already moved from his job as driller with Red Tiger and had been working at the KRH division for several weeks. There are a lot of points connected and illustrated by this change from one division to another within the company by Mr. Foos which I want to cover now.

In 1956, Harold Foos was paid by me working for Red Tiger Drilling Company $5,576. During the year 1965, Harold Foos, as a driller for Red Tiger, was paid $8,827. Harold Foos' present pay rate at the KRH division on a forty hour week will equal $5,200 per year.

I did not know he had changed until several weeks later. I understand now he applied for a job with KRH division on the basis that he knew nothing about it, but he was willing to work and willing to learn. Except for one man, he is the lowest paid employee at the KRH plant. For anyone who might skeptically wonder why a man would change from a job that paid $8,800 a year to a job that paid $5,200 a year, let me give you some facts that will be enlightening.

In September, 1960, Harold Foos' hourly pay rate was $2.40 per hour as a driller for me on Red Tiger Rig #2. From 4:00 in the afternoon until midnight, he with three men working under him were in complete charge of one of my rotary rigs, which would cost $150,000 to $300,000 to replace. It is a complicated piece of machinery -- big, heavy and dangerous -- and during this 10 year period, Harold Foos constantly made decisions anyone of which, if they were wrong, could have cost me thousands of dollars.

The drilling rig crews work 56 hours a week, 40 hours regular time, 16 hours at time and a half, 7 days a week, holidays, heat, dust, rain or snow. It is tough, hard, physical work and the crews often drive 100 miles a day to and from work on their time, at their expense. Almost 10 years ago, Harold Foos had a severe physical problem with a back injury that has been more or less continuous. At one time, after consulting a specialist, he considered an operation which would fuse his back. As I remember, his first medical bill on Workmen's Comp 10 years ago was approximately $2600. For the last year and a half or two years, Rig No. 2 has been drilling near the Nebraska state line approximately 150 miles from his home in Russell. I mentioned before he was the No. 2 driller on Rig #2, after working for the company for 10 years. The drilling superintendent in charge of all three rigs is Roy McClure, who is Harold Foos father-in-law. The reason Harold Foos was the No. 2 driller on this rig was not because of any limitations of his ability, experience or dedication, it was simply that the man who was the No. 1 driller for this rig was doing his job and doing it well. This is the way our company runs, what is right, is right for everybody. Even though, I have not been in personal contact with Harold Foos for a number of years, I am sure

that he knew that I knew what was going on and he knew that I knew he was doing a good job without me personally having to go out and hold his hand. Why did Foos give up a better paying job for a lesser paying one? The reason was because of his back injury and his own desire and his wife's insistance that he take care of his health and their mutual desire that he get a change to be at home more.

Since the KRH employees came to work for me on July 26, 1965, in addition to that month paying AMC 98% of all of the money they would ever receive as per our contract, I have paid every bill that has been incurred by the KRH plant. A brief breakdown of these expenditures from the time you came to work, July 26, 1966, to May 1, 1966, is as follows:

Utilities, Repairs, Supplies & Maintenance	$ 156,401.17
Salaries, Payroll Taxes & Group Insurance	200,902.27
Tools, Spare Parts & Equipment	164,885.25
Interest and Loan Costs	487,097.56
Insurance	31,954.00
	$ 1,041,240.25

In the first ten months you were employed by me, this represents more than a million dollars that I spent on the KRH plant with a zero income from the plant. Where in the world do you suppose this money came from? I do not print it. I will tell you where it came from, the rest of the company was paying these bills and your salaries. Red Tiger Drilling Company was drilling contracts, the coordinated effort of all other divisions of the company were contributing through services, oil and gas exploration and production. I also borrowed another half million dollars. Nevertheless, ten months after the initial 16 people started to work in the KRH division of my company, by May 23, they had received an average raise for the 16 people of approximately 10%, which for the first year would equal about 12%. Obviously, and as you know so well, the first ten months you were employed by me was all expenditure and no income.

Why do you suppose these raises were given? Because I felt that I had to do this. No. I had heard that as a group all of you were very good people, dedicated, loyal, hard working, I felt that in spite of my problems, you deserved a raise and I wanted to give it to you.

Now, after this lengthy letter of my personal history and the history of my company, if you are wondering what my purpose is, for example, perhaps to brag and say look what I have done. No. That was not my purpose. I understand that many of my KRH employees wanted to know

more about me and about my company and I cannot think of any quicker, better way than to lay it flat out. Added to this, which I have mentioned, is the obligation which I feel toward anyone who works for me, which is the reason I have taken the time to compose this lengthy letter.

What have I done, I will tell you what I have done. I started buying leases for the helium plant in which you work, six years ago. I took my last vacation in 1962. I have a lovely wife and 3 sons I dearly love. During the last 4 years, I have been working about 12 hours a day, seven days a week for my employees and my boys are growing up much too fast.

I am 42 years old. I have been working 30 years, that is retirement time. I need some fringe benefits for overtime and vacation time. Why don't I just sell everything and retire? In answer to this, is the obligation I feel to the employees who have worked an aggregate total of 357 years for me. But there are moments of weariness, when this thought goes through my mind.

Now, as I have told you, I just became aware of this problem, I have written you this booklet on me and my company, so at this point what am I going to do about it. I have to be out of town the latter part of this week. Next week, when I return, I will come out to the plant and meet with you.

I am transferring Norman Klein to the KRH plant immediately on a full time basis as the General Manager of the plant. He will be in charge of administration of the plant and plant personnel. Buddy Owens, the works manager, will report directly to Norman Klein. Norman will probably give you this letter personally in the next day or so and I will see you next week.

Sincerely yours,

KANSAS REFINED HELIUM COMPANY

/s/ George A. Angle

GAA:mvs

KANSAS REFINED HELIUM COMPANY

1720 Wichita Plaza, Wichita, Kansas 67202

July 27, 1966

Arel L. Rodgers
Otis,
Kansas

Dear Mr. Rodgers:

We have received word that the National Labor Relations Board will hold a hearing soon to determine who is to vote in the election, which will be KRH employees voting on whether each one wants a union or not, and when it will be held. Enclosed, is a copy of the union's letter to KRH and a copy of my answer.

The question has been raised, if an employee signed a union card, does it mean he has to vote for the union in the election? The answer to this is "No." The vote of "yes" or "no" will be by secret ballot and no one will know how any employee votes. If you want the union, vote "Yes," if you do not want the union, vote "No."

It is important, however, that everyone vote. The law states that the election will be determined by a majority of the valid votes cast. This means that if only ten people in the plant were to vote, it could be decided by just six voters. Even if over 50 percent of the votes are for the union, all employees will lose their right to bargain for themselves, including those who votes "No" and were against the union. If, the majority vote "No," then all employees will retain their present right to speak for themselves. For this reason, I urge all of you to study the matter carefully and then be sure and vote when the election is held.

We have just completed a review and raised wages in all other divisions of the company. The question came up about raises for KRH employees. I have checked and found that the union can file unfair labor practices charges against us if we either give or promise to give new raises to any employees that the union claims to represent. I am told this will be true until the election. At that time, if a majority of the employees vote "No," we can then work out wages, hours and working conditions with individual employees and without the union. If, however, a majority vote "Yes," this will mean we will then be prohibited by law from working out wages, hours and working conditions direct with the employees - instead, the law will force us to handle all such matters with the union.

But, we are told, the union can make promises about what it is going to do and that seems to be O. K. under the law. Why? - Apparently the Government knows that unions do not sign paychecks. Their promises are just that - promises. Employers, on the other hand, are not going to make any promises that they are not going to stand behind.

I deal in performance - not promises. Promises are cheap - especially when you do not have to back them up.

Enclosed, is a magazine clipping which tells what this union actually got in its contract negotiations last year. 4.5%!. At this rate, a person making $2.50 per hour would get a raise of only about 11 cents. How does the union 4.5% raise compare with the raises granted voluntarily here at KRH without union dues, initiation fees, fines and assessments?

It was just about a year ago that we took over the plant. In ten months, we increased wages in the plant by an average of approximately 10 percent.

Obviously, these have been substantial increases. The reason is just as obvious - we believe that employees are the backbone of the companies. We have followed a policy of extremely liberal benefits over the years in all the Angle companies. 25 cent raises are not uncommon here. Whoever heard of 25 cent raises by a union?

Performance is what counts - not promises. The union's performance, as shown on the enclosed clipping, equal 4.5%. KRH's performance equal approximately 10%. For the first year you have worked for KRH, I am sure we are all aware that the KRH plant had practically no helium sales or income during this year.

I am sure you either have or will be receiving the latest up-to-date information from the union on their activities with other companies. So you will have the fullest information possible in order to compare our performance with the union's performance, I am enclosing copies of some of our other company letters showing the most recent increases in pay. Again, I suggest - if you have any questions about how we operate year in and year out - that you ask the employees who have worked for me over the years.

Let us compare performance - not promises.

As soon as I have further word on the election, I will get it to you. In the meantime, if you have any questions, call or write me in Wichita, or discuss them with Norman, or me, the next time I am at the plant.

Sincerely yours,

KANSAS REFINED HELIUM COMPANY

/s/ George A. Angle

GAa:mvs

Oil, Chemical and Atomic Workers
International Union
INTERNATIONAL REPRESENTATIVE

8101 Mead St.,
Wichita, Kansas 67216
June 29, 1966
Phone: 316 JA 2 1384

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kansas Refined Helium Company
Otis, Kansas 07565

Attention: Mr. Buddy Owens, Plant Manager

Gentlemen:

The Oil, Chemical and Atomic Workers International Union now represents a majority of the Production and Maintenance employees of the Kansas Refined Helium Company at its Otis, Kansas, plant.

We are willing, and now offer, to meet with you or your representatives, together with myself and a committee from your employees at its Otis plant for the purpose of negotiating a collective bargaining agreement covering wages, rates of pay, hours of work and other conditions of employment of employees in the above unit.

We are hopeful you will see fit to advise us of time, date and place such meeting can be arranged for the purpose inaugurating negotiations and that such negotiations will result in a collective bargaining areeement that will be of mutual benefit to you and your employees.

Sincerely yours,

Oil, Chemical and Atomic Workers
International Union

/s/ Hager Patton,
International Representative

If we had agreed to this letter, KRH employees would be represented by this union without having their individual right to vote yes or no.

KANSAS REFINED HELIUM COMPANY

1720 Wichita Plaza, Wichita, Kansas 67202

July 6, 1966

Mr. Hager Patton
International Representative
8101 South Mead
Wichita, Kansas 67216

Dear Mr. Patton:

This will acknowledge receipt of your letter of June 29, 1966, directed to Mr. Buddy Owens at Kansas Refined Helium Company, together with a copy of your letter to Mr. Martin Sachs, Regional Director of the National Labor Relations Board, dated June 30, 1966, and a copy of the Petition for Certification which you filed with his office.

In view of your Petition and the fact that we do not believe that a majority of our employees in the proper bargaining unit are in favor of the union, we will proceed to handle this matter through an election conducted by the National Labor Relations Board. In this the employees can make their choice by secret vote.

Sincerely yours,

KANSAS REFINED HELIUM COMPANY

/s/ George A. Angle

GAA:ck

cc: Mr. Martin Sachs, Regional Director
Region #17
National Labor Relations Board
1200 Rialto Building
906 Grand Avenue
Kansas City, Missouri 64106

OCAW settles for 4.5%; national strike averted

AN ELEVENTH hour decision by the Oil, Chemical & Atomic Workers Union's national bargaining policy committee to accept 4.5% wage-increase offers by industry averted a nationwide refinery strike last week.

The union's president, A. F. Grospiron, announced while strike preparations were continuing that the committee had voted to settle for 4.5%, provided no contract extended past Dec. 31, 1966.

As the strike-deadline approached, negotiators were farthest apart on contract-extension provisions. Companies wanted contracts to extend beyond the June 30, 1966, expiration date; union negotiators held out for no extension. The policy committee finally decided to accept extensions.

Some local strikes were possible, however. At companies where settlement was not close, the policy committee left to local negotiators the decision of whether to strike or grant more time.

During the final, tiring hours of negotiations, here's how the picture stood:

Both the oil companies and the union completed strike preparations even while bargaining talks continued at nearly a score of locations over the country right up to last Friday's strike deadline. Federal mediators were present at some sessions.

In Washington, the Federal Mediation and Conciliation Service said its mediators participated in the talks either on their own initiative or by invitation of the negotiators

Companies planned to keep their refineries operating with supervisors replacing union employees who strike. OCAW locals drew up picket-line assignments, planned strike strategy, and prepared strike-relief payments for affected workers.

Negotiators actually weren't too far apart. OCAW asked for wage increases of 5% in a 1-year contract with a minimum raise of 15 cents/hr. Bulk of the companies have offered increases of 4%. Some companies earlier offered slightly more for a 2-year contract, but these were rejected by the union, which later dropped its demand to 4½%.

Great Northern Oil Co. of St. Paul, Minn., which has a 75,000-b/d refinery at Pine Bend, Minn., offered the union 16 cents/hr across the board in a contract expiring next July 1. Union officials estimated this "practically hits our goal of a 5% increase on the nose." Leonard Refineries, Inc., of Alma, Mich., and Pennzoil Co., of Houston, earlier had met the union's request.

Since Great Northern is owned by the Pure Oil division of Union Oil Co. of California, a major oil company, its offer was held significant. So far most of the majors' latest offers provided only for wage raises of 4% and these included Texaco, Socony Mobil, Gulf, Atlantic Refining, Tidewater, Marathon, and Sinclair. Sohio has offered its employees a 14-cent/hr increase. Continental's latest offer was a raise of 5% divided equally over a 2-year contract. Humble offered its workers a 4.5% raise.

Offshore Texas bids average only $52/acre

Companies bid only $6.8 million for 131,660 acres in the Gulf of Mexico, the lowest offering they have made for tracts in Texas waters this year.

COMPETITION on bidding for state leases in the Gulf of Mexico off Texas last week was lackluster at best, except for some semiproven acreage.

Bonus bids in the Oct. 5 sale totaled $6.8 million for 131,660 acres, lowest offering for any of the two earlier sales of tracts this year, most of them offshore. Average price paid per acre fell from a high of $90 last February to $52 last week.

Phillips Petroleum Co. was the high bidder at the state's sale of offshore leases, both for an individual tract and for total bids.

In all, the company won 12,960 acres, paying $1,170,720. Phillips paid $293,760 each for two 1,440-acre tracts off Brazoria County. One high bid is for the southwest quarter of state Tract 306 L, and the other is for the northeast quarter of 310 L.

Phillips also paid $203,040 for a portion of state Tract 307 L.

Next highest bidders are:

Shell Oil Co. which paid $780,720 for 22,010 offshore acres; Standard Oil Co. of Texas, $573,085 for 14,400 acres; Socony Mobil Oil Co., Inc., $327,024 for 5,600 acres; John W. Mecom, $138,877 for 5,076 acres; and Texaco Inc. $129,523 for 3,359 acres.

Counting all three sales held this year by the School Land Board of Texas, this puts more than 780,000 acres of offshore state lands under lease to oil companies. Cost for these leases is $63.8 million.

Other leasing. Although the offshore leasing was almost without competition on individual tracts, four groups fought it out over 15 leases totaling 4,225 acres in Corpus Christi Bay of Nueces County. The companies are Cities Service, Sunray DX-Shell, Humble, and Atlantic.

Cities Service won the most, paying $242,863 for 2,415 acres in nine tracts. Sunray DX Oil Co. and Shell Oil Co., bidding as one, picked up the other six tracts at a cost of $340,600 for 1,810 acres.

Although there is some shallow production in the bay now, most observers believe the spirited bidding for the bay acreage is due to the potential of the deeper zones.

A good deep discovery in the bay areas could well be the proper spark to set off the offshore Texas play.

To keep you informed about the company you are a part or, today, I sent these letters to employees of the other divisions of the company concerning salary raises. All divisions of our company, other than the KRH division, had their last pay raise February, 1966. This letter comprises a group of 48 hourly employees named in my letter to you dated July 11, 1966.

Of the 70 employees in my company, other than KRG, 57 were included in this pay raise. The other 13 have reveived additional pay raises since February, 1966.

These additional pay raises are as follows:

Red Tiger Drilling Company

33	Drillers and roughnecks	$ .10 per hr 2-6-66 $ .30 per hr 7-24-66

Red Tiger Truck

8	Drivers, swampers, roustabouts	$ .10 per hr 2-6-66 $ .30 per hr 7-24-66

Hays Tank Service

3	Drivers	$ .10 per hr 2-6-66 $ .30 per hr 7-24-66

Great Plains Drilling Company

1	Tool Pusher	$ .25 per hr 2-6-66 $ .50 per hr 7-24-66
3	Tool Dressers	$ .10 per hr 2-6-66 $ .15 per hr. 7-24-66

This list represents 48 hourly employees who have received raises in the last six months, averaging slightly more than $.40 per hour. This is an example of company policy as it has been since the beginning 12 years ago.

RED TIGER DRILLING COMPANY
1720 Wichita Plaza, Wichita, Kansas 67202

July 26, 1966

HAYS TANK SERVICE
CLAYTON ENGEL

February 6, 1966, you received a salary raise of 10 ¢ per hour which increased your salary to $1.95 per hour and drivers to $1.70 per hour. Beginning May 1, 1966, Internal Revenue increased the income tax rate and added to that, the cost of living for all of us, considered over the relatively short period of the last five or six months, has increased at a rate probably greater than the income tax increase.

What these two points mean to you personally, considering this from your standpoint, is that even though you received a raise in February of this year, you have less money today than you had before the raise.

I do not have any control over the cost of living nor the increase in income taxes, but in thinking of you as a part of my company and the peraonal interest I have in each of you, I can help offset this with a pay raise. Based on the thought that I work for you and you work for me, I sincerely appreciate your dedication, loyalty and hard work. By working together, we have made our company grow, you know how hard I work for all of you and I certainly know that the single most important factor in our company's growth has been the good people who work for me.

Effective July 24, 1968, which commences a new pay period, your salary will be increased from $1.95 per hour to $2.25 per hour and your drivers increased from $1.70 per hour to $2.00 per hour.

You are doing a fine job and have earned this raise. I do appreciate your loyalty and dependability, keep up the good work!

Sincerely yours,

/s/ George

cc: Roy McClure

FRONTIER OIL COMPANY

1720 Wichita Plaza, Wichita, Kansas 67202

July 26, 1966

GREAT PLAINS DRILLING COMPANY
Elmer Snyder

Dear Elmer:

February 6, 1966, you received a salary raise of $.25 per hour which increased drillers salary to $2.50 per hour. Beginning May 1, 1966, Internal Revenue increased the income tax rate and added to that, the cost of living for all of us, considered over the relatively short period of the last five or six months, has increased at a rate probably greater than the income tax increase.

What these two points mean to you personally, considering this from your standpoint, is that even though you received a raise in February of this year, you have less money today than you had before the raise.

I do not have any control over the cost of living nor the increase in income taxes, but in thinking of you as a part of my company and the personal interest I have in each of you, I can help offset this with a pay raise. Based on the thought that I work for you and you work for me, I sincerely appreciate your dedication, loyalty and hard work. By working together, we have made our company grow, you know how hard I work for all of you and I certainly know that the single most important factor in our company's growth has been the good people who work for me.

Effective July 24, 1966, which commences a new pay period, your salary will be increased from $2.50 per hour to $3.00 per hour for drilling. Roustabout salary is being raised to $2.05 per hour. In order to maintain harmony within our organization, when anyone works at any job other than his usual job, he will be paid on the basis of whatever the job he is doing pays.

You are doing a fine job and have earned this raise. I do appreciate your loyalty and dependability, keep up the good work!

Sincerely yours,

/s/ George

cc: Mr. Roy R. Kruger

RED TIGER DRILLING COMPANY

1720 Wichita Plaza, Wichita, Kansas 67202

July 26, 1966

RED TIGER TRUCK COMPANY

February 6, 1966, you received a salary raise of 10¢ per hour which increased drivers salaries to $2.10 per hour and swampers to $1.85 per hour. Beginning May 1, 1966, Internal Revenue increased the income tax rate and added to that, the cost of living for all of us, considered over the relatively short period of the last five or six months, has increased at a rate probably greater than the income tax increase.

What these two points mean to you personally, considering this from your standpoint, is that even though you received a raise in February of this year, you have less money today than you had before the raise.

I do not have any control over the cost of living nor the increase in income taxes, but in thinking of you as a part of my company and the personal interest I have in each of you, I can help offset this with a pay raise. Based on the thought that I work for you and you work for me, I sincerely appreciate your dedication, loyalty and hard work. By working together, we have made our company grow, you know how hard I work for all of you and I certainly know that the single most important factor in our company's growth has been the good people who work for me.

Effective July 24, 1966, which commences a new pay period, your salary will be increased from $2.10 per hour to $2.40 per hour for drivers and increased from $1.85 per hour to $2.05 per hour for swampers.

Any roustabout work will be on the basis of $2.05 per hour.

You are doing a fine job and have earned this raise. I do appreciate your loyalty and dependability, keep up the good work!

Sincerely yours,

/s/ George

cc: Claude Branch
Roy McClure

RED TIGER DRILLING COMPANY

1729 Wichita Plaza, Wichita, Kansas 67202

July 26, 1966

RED TIGER DRILLING COMPANY

February 6, 1966, you received a salary raise of 10¢ per hour which increased drillers salary to $2.70 per hour and roughnecks to $2.25 per hour. Beginning May 1, 1966, Internal Revenue increased the income tax rate and added to that, the cost of living for all of us, considered over the relatively short period of the last five or six months, has increased at a rate probably greater than the income tax increase.

What these two points mean to you personally, considering this from your standpoint, is that even though you received a raise in February of this year, you have less money today that you had before the raise.

I do not have any control over the cost of living nor the increase in income taxes, but in thinking of you as a part of my company and the personal interest I have in each of you, I can help offset this with a pay raise. Based on the thought that I work for you and you work for me, I sincerely appreciate your dedication, loyalty and hard work. By working together, we have made our company grow, you know how hard I work for all of you and I certainly know that the single most important factor in our company's growth has been the good people who work for me.

Effective July 24, 1966, which commences a new pay period, your salary will be increased from $2.70 per hour to $3.00 per hour for drillers and increased from $2.25 per hour to $2.55 per hour for roughnecks.

You are doing a fine job and have earned this raise. When we are drilling contract wells, we are a service company and the long list of satisfied customers is proof that we are performing as a service company should. Red Tiger has been able to keep busy during a time when there are fewer rigs running in Kansas than ever before. Keep up the good work!

Sincerely yours,

/s/ George

cc: Roy McClure, Mr. Tom Buffington
Mr. Sylvester Fickel, Mr. Fred Damme

GENERAL COUNSEL'S EXHIBIT NO. 12

C. Leon Myers

Date Started	9-4-65	
Starting Rate	$253.85	Bi-Weekly
Pay Increases:		
5-23-66	265.38	Bi-Weekly
9-12-66	276.94	Bi-Weekly

W. L. Roberts

Date Started	7-26-65	
Starting Rate	$ 3.00	Per Hour
Pay Increases:		
1-31-66	3.15	Per Hour
5-23-66	3.45	Per Hour
9-26-66	3.60	Per Hour
11-20-66	323.08	Bi-Weekly

Richard Leroy Gfeller

Date Started	10-24-66	
Starting Rate	$ 3.20	Per Hour
Pay Increases:		
12-5-66	323.08	Bi-Weekly

Harry L. Harms

Date Started	7-26-65	
Starting Rate	$ 3.50	Per Hour
Pay Increases:		
5-23-66	3.85	Per Hour
9-26-66	4.00	Per Hour
12-19-66	369.24	Bi-Weekly

William J. Bittner

Date Started	11-13-66	
Starting Rate	$ 2.80	Per Hour

Corey T. Call

Date Started	4-19-66	
Starting Rate	$ 2.25	Per Hour
Pay Increases:		
9-26-66	3.20	Per Hour

Jack E. Durbin

Date Started	7-26-65	
Starting Rate	$	3.00 Per Hour
Pay Increases:		
1-31-66		3.15 Per Hour
5-23-66		3.45 Per Hour
9-26-66		3.60 Per Hour

Harold L. Foos

Date Started	(Started 12-56 with Red Tiger Drilling) Started 5-1-66 with KRH	
Starting Rate	$	2.50 Per Hour
Pay Increases:		
9-26-66		3.20 Per Hour

James D. Foose

Date Started	5-2-66	
Starting Rate	$	3.00 Per Hour
Pay Increases:		
9-26-66		3.20 Per Hour

George A. Freidenberger

Date Started	11-7-66	
Starting Rate	$	2.80 Per Hour

Jimmie F. Ham

Date Started	7-26-65	
Starting Rate	$	3.00 Per Hour
Pay Increases:		
2-14-66		3.50 Per Hour
5-23-66		3.85 Per Hour
9-26-66		4.00 Per Hour

Gerald L. Julian

Date Started	7-26-65	
Starting Rate	$	3.00 Per Hour
Pay Increases:		
1-31-66		3.15 Per Hour
5-23-66		3.45 Per Hour
9-26-66		3.60 Per Hour

Dennis D. Lane

Date Started	11-15-66	
Starting Rate	$	2.80 Per Hour

Thomas B. Lynch

Date Started	7-26-65	
Starting Rate	$	3.00 Per Hour
Pay Increases:		
1-31-66		3.15 Per Hour
5-23-66		3.45 Per Hour
9-26-66		3.60 Per Hour

Gerald D. Michaelis

Date Started	10-31-66	
Starting Rate	$	2.80 Per Hour

William F. Pickerill

Date Started	7-26-65	
Starting Rate	$	3.00 Per Hour
Pay Increases:		
5-23-66		3.30 Per Hour
9-26-66		4.00 Per Hour

Arnold N. Reichel

Date Started	11-14-66	
Starting Rate	$	2.80 Per Hour

Merle G. Smith

Date Started	2-10-66	
Starting Rate	$	3.00 Per Hour
Pay Increases:		
9-26-66		4.00 Per Hour

Harold L. Straub

Date Started	11-21-66	
Starting Rate	$	2.80 Per Hour

John Wakulich

Date Started	7-26-65	
Starting Rate	$	2.50 Per Hour
Pay Increases:		
1- 3-66		2.75 Per Hour
5- 9-66		3.00 Per Hour
9-26-66		3.20 Per Hour
12-19-66		4.00 Per Hour

Dean S. Tittel

Date Started	4-18-66	
Starting Rate	$	4.00 Per Hour
Pay Increases:		
9-26-66		4.50 Per Hour

Larry D. Wineland

Date Started	10-7-66	
Starting Rate	$	2.50 Per Hour
Pay Increases:		
12- 5-66		2.80 Per Hour

Ronald J. Weinman

Date Started	1-25-66	
Starting Rate	$	2.50 Per Hour
Pay Increases:		
2-14-66		3.00 Per Hour
9-26-66		3.20 Per Hour

Altha A. Young

Date Started	(Started June, 1965 with Great Plains) Started 10-24-66 with KRH
Starting Rate	$ 2.80 Per Hour

Robert Lynn Doze

Date Started	10-25-66	
Starting Rate	$	3.20 Per Hour
Pay Increases:		
12- 5-66		3.40 Per Hour

Norman L. Wagner

Date Started 11-28-66
Starting Rate $ 2.80 Per Hour

Wendell C. Hinman

Date Started 11-29-66
Starting Rate $ 2.80 Per Hour

Billy W. Brack

Date Started 9-22-66
Starting Rate $ 2.00 Per Hour

R. L. Mootz

Date Started 7-16-66
Starting Rate $ 2.00 Per Hour

Charles A. Myers

Date Started 6-6-66
Starting Rate $ 1.75 Per Hour
Part Time
Pay Increases:
12-19-66 2.00 Per Hour

Bernia Palmer

Date Started 7-23-66
Starting Rate $ 2.00 Per Hour
Part Time

Joseph F. Riedl

Date Started 6-8-66
Starting Rate $ 1.75 Per Hour
Part Time

John H. Lichter

Date Started 12-19-66
Starting Rate $184.62 Bi-Weekly

Joseph M. Gossage

Date Started	12-27-66
Starting Rate	$369.24 Bi-Weekly

Dwayne A. Johnson

Date Started	7-26-65
Starting Rate	$ 3.85 Per Hour
Terminated	9-20-66

William A. Sloan

Date Started	9-4-65
Starting Rate	$ 4.14 Per Hour
Terminated	7-24-66

Sylvester J. Breit

Date Started	11-11-66
Starting Rate	$323.08 Bi-Weekly
Terminated	12-18-66

Thomas B. Garrett

Date Started	1-17-66
Starting Rate	$ 2.50 Per Hour
Pay Increases:	
5- 9-66	2.75 Per Hour
Terminated	9-20-66

Russell M. Sims

Date Started	7-26-65
Starting Rate	$ 3.50 Per Hour
Pay Increases:	
5-23-66	3.85 Per Hour
Terminated	9-20-66

Arel L. Rodgers

Date Started	7-26-65
Starting Rate	$ 3.50 Per Hour
Pay Increases:	
5-23-66	3.75 Per Hour
Terminated	9-20-66

Russell L. Bishop

Date Started	4-25-66
Starting Rate	$ 2.75 Per Hour
Terminated	9-20-66

John S. Harris

Date Started	7-26-65
Starting Rate	$ 2.50 Per Hour
Pay Increases:	
1- 3-66	2.75 Per Hour
5- 9-66	3.00 Per Hour
Terminated	9-20-66

William R. Stanlman

Date Started	7-26-65
Starting Rate	$ 3.00 Per Hour
Terminated	5- 8-66

Ronald L. Anderson

Date Started	12- 5-65
Starting Rate	$ 2.15 Per Hour
Terminated	1-30-66

Morris E. Johnson

Date Started	2-28-66
Starting Rate	$ 2.50 Per Hour
Terminated	5- 8-66

Dale R. Coughlin

Date Started	1-12-66
Starting Rate	$ 2.50 Per Hour
Terminated	4-24-66

Gerhardt L. Nuss

Date Started	1-12-66
Starting Rate	$ 2.50 Per Hour
Terminated	4-24-66

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Donald L. Ross

Date Started	1-31-66
Starting Rate	$ 3.00 Per Hour
Terminated	4-10-66

GENERAL COUNSEL'S EXHIBIT NO. 13

September 21, 1966

Mr. Marvin J. Martin, Attorney
458 North Market Street
Wichita, Kansas

Oil Chemical and Atomic Workers International Union
Attn: Mr. John Tedlock, Acting General Counsel
P.O. Box 2812 -1840 California Street
Denver, Colorado 80801

Re: George A. Angle d/b/a
Kansas Refined Helium Company
Cases Nos. 17-RC-5126
17-CA-3021

Gentlemen:

This is to advise that due to the filing of the charge of unfair labor practices in Case No. 17-CA-3021, the election scheduled for September 28, 1966 in Case No. 17-RC-5126 is hereby postponed indefinitely. Further processing of the representation matter will be resumed upon the disposition of the charge case or the receipt from the Petitioner of a "Request to Proceed" with the election.

Very truly yours,

/s/ William R. Halt
Field Examiner

WRH:cv

cc:
Mr. George A. Angle, Kansas Refined Helium Co., 1720 Wichita Plaza, Wichita, Kansas
Mr. Hager Patton, Oil, Chemical and Atomic Workers Int'l. Union, 8101 S. Mead, Wichita, Kansas 67216
Mr. Joe Applebaum, Oil, Chemical and Atomic Workers Int'l. Union, PO Box 2812, 1840 California Street, Denver, Colorado 80201
Mr. Robert Dickel, Oil, Chemical and Atomic Workers Int'l. Union, Suite 719 McBirney Bldg., 8 E. 3rd Street, Tulsa, Oklahoma 74103

GENERAL COUNSEL'S EXHIBIT NO. 16

E 8
Wic 7-4-..

		COMPTROLLER		
	NORMAN KLEIN	- GEN. MGR.		
1	W. E. OWENS	- PLANT MGR		
2	HENRY TYLER	- PLANT ENG.		
3	JOHN R. STAFF	- MAINT. ENG.		
4	RUSSELL M. SIMS	- SENIOR OPERATOR		
5	HARRY HARMS		✓	✓
6	AREL ROGERS		✓	✓
7	J. MNE HAM		✓	✓
8	LEON MYERS	- PLANT CLERK		
9	DWAYNE JOHNSON	- INST. MAN		
10	THOMAS LYNCH	- [redacted]	MAINT. OPER.	
11	JACK DURBIN		✓	✓
12	GERALD JULIAN		✓	✓
13	W. L. ROBERTS		✓	✓
14	WILLIAM PICKERILL		ASSIST. OPERATOR	
15	MERLE SMITH		✓	✓
16	RONALD WEINMAN		✓	✓
17	JOHN WAKULICH		✓	✓
18	JOHN HARRIS		✓	✓
19	THOMAS B. GARRETT		✓	✓
20	[redacted] COREY T. CALL	- CUSTODIAN & ASST. OP.		
21	DEAN TITTLE	- ELECTRICIAN		
22	JAMES D. FOOSE		ASSIST. OPERATOR	
23	HAROLD L. FOOS		✓	✓
24	JOSEPH RIEDL	- LABORER & MAINT OP.		
25	CHARLES MYERS		✓	✓ ✓
26	RUSSELL BISHOP		ASSIST OPERATOR	

NATIONAL LABOR RELATIONS BOARD

Docket No. 17-RC-5210 OFFICIAL EXHIBIT NO. Employer's 8

Disposition: Marked ✓ Received ✓ Rejected

In the matter of Kerr-McGee Refining Corp.

Date 4/9/64 Witness Tyler Reporter PS

No. Pages 1

GENERAL COUNSEL'S EXHIBIT NO. 17-A

MOTION TO REOPEN RECORD AND
FOR ADDITIONAL HEARING

COMES NOW the Respondent, George A. Angle, d/b/a Kansas Refined Helium Company, and states as follows:

1. On Saturday, January 21, 1967, after the conclusion of the hearing in the instant action, the undersigned had a conversation with Mr. Tom Garrett, one of the alleged discriminatees who failed to appear to testify at the trial in this case but who had testified upon discovery deposition and also at the trial of the injunction case filed by the Regional Director against Respondent, in Case No. W-3766, in the United States District Court for the District of Kansas. This conversation was attended by Mr. Patrick Kelly, Attorney for the Union, and Mr. W. Stanley Churchill, another of Respondent's attorneys. This conversation was recorded and a copy of the same is attached as Exhibit 1.

2. By reason of such conversation, it appears that portions of the testimony previously introduced in the injunction action were false. In view of the Board's discretionary power in the matter of reinstatements, dependent upon the actions of the alleged discriminatee (see Memorandum Brief attached), false testimony is an important and necessary element to be considered by the Trial Examiner, which information was not made known to Respondent until after the close of the hearing in this case.

3. It further appears that Mr. Garrett testified incorrectly concerning the status of the senior operators upon the disposition at the injunction hearing and that he has additional evidence concerning such status which should be presented to the Trial Examiner.

WHEREFORE, Respondent requests that the record be reopened and additional hearing held concerning the above matters.

Respectfully submitted,

MARTIN & WOOLEY

/s/ Marvin J. Martin
Attorneys for Respondent

[CERTIFICATION]

EXHIBIT 1

Martin: This is a recording January 20th, approximately 4:00 p. m., Mr. Tom Garrett, Mr. Pat Kelly, Mr. Stan Churchill and myself, Marvin Martin. Go ahead, Tom, you started to tell us something.

Garrett: First of all, this point of the letter -

Martin: What letter are you talking about?

Garrett: The single page letter.

Martin: The last letter - there were three letters?

Garrett: Well, there was a double page, a single page, and then it had a little shorter letter.

Martin: Are you talking about the third letter, the one that had the names of the nine people on it?

Garrett: No, I'm talking about the -

Martin: The single page letter that was addressed "To Whom It May Concern?"

Garrett: I believe that's the way it was.

Martin: All right. Go ahead.

Garrett: Uh, I did have an idea who wrote it because it was shown to me by a person.

Martin: Who did write it?

Garrett: Well, I don't know who wrote it, I really don't.

Martin: When was it shown to you?

Garrett: I can't give you the exact date, but it was sometime, it was either at the day or night of the dinner, or two or three days close to it, I don't know whether it was the same day or two days.

Martin: How was it shown to you?

Garrett: Uh, I think -

Kelly: Or a desk?

Garrett: Well, it could have been a desk drawer, it was either a bottom drawer or, there was a briefcase there, and I don't know -

Kelly: Well, let's get our placement correct, Tom, were you at the plant?

Garrett: Yeah, uh huh, at the plant.

Kelly: Were you in the control room or in the office?

Garrett: I was in the - I think it was the office that Klein was using or -

Kelly: Who was there, sir?

Garrett: Well, uh, Sims showed me the letter.

Kelly: All right.

Martin: What time of day or night was it?

Garrett: I don't remember that, uh -

Martin: Did he take you in to where the letter was?

Garrett: Yes, he did.

Kelly: Was Wakulich there, too?

Garrett: Well, he was in the control room -

Martin: I see.

Garrett: When I went around to look at the letter - when Sims asked me to come around he wanted to show me something - some words similar to that.

Martin: I see, so you did go with him then and he showed you this letter?

Kelly: What was said, anything?

Garrett: I don't remember. I don't really remember if there was much said.

Martin: Well, did - had Sims been typing up in the front and before he showed you the letter?

Garrett: I couldn't say - I really couldn't say.

Kelly: Now let's just - we all want to get to the truth of the thing, Tom.

Garrett: Well, yeah, I know you do.

Kelly: Did Russell Sims ever tell you that he wrote that letter?

Garrett: I don't remember him ever saying that.

Kelly: All right.

Garrett: I don't really remember him ever saying that.

Kelly: Did he also show the same letter to Wakulich? Do you remember?

Garrett: I don't know, I don't know what he showed Wakulich. I am sure it was the same letter but I don't know.

Kelly: What did he say to you, if you remember?

Garrett: I can't - I can't recall.

Kelly: Now is that all you wanted to get off your chest?

Garrett: No, there was a point on supervision, some questions there and the point about - you asked me at one time, I believe, about did we ever get together and compare notes?

Martin: Yes.

Garrett: Now, after the discharge, I believe it was the same day, I don't - yes, it must have been - we did get together and discuss it, the six of us.

Kelly: Now who's we, the six?

Garrett: Uh huh, and we decided to see if we couldn't remember what Mr. Angle said, because we wanted to remember.

Martin: I see.

Garrett: For our own benefit actually -

Martin: I see.

Garrett: - uh, and we all took papers, pieces of paper, and wrote down what we thought he said to us or what we thought was important.

Martin: You had a meeting all together and each of you wrote down - Did you exchange - you mean - you talked in a group and then you made your notes individually?

Garrett: Yes we did.

Martin: And then you - you each took your own notes back and made your own statement from your own notes, is that the way you handled it?

Garrett: Uh -

Martin: Or did one person write up the statements?

Garrett: Well, one person wrote up a statement from each of us - Mr. Johnson - we were alone with him when we gave the statement, and it was in our -

Kelly: Was that Mr. Johnson of the NLRB?

Garrett: Yes, I believe so.

Kelly: All right.

Martin: But you had previously written statements in typed form, hadn't you?

Garrett: No, I hadn't.

Martin: You had not? I see.

Kelly: Let me ask you this, Tom. Didn't Mr. Patton also ask you to - you guys to reflect your thoughts and prepare it on a statement of some sort? I understood that was -

Garrett: Well, I don't know whether he did or not.

Kelly: All right. I don't think there is any mystery about that part.

Martin: Well, we had - no we had asked before concerning whether or not they had gotten together and discussed this thing before the statements and had been - it was our understanding at least that that had not happened - what Mr. Garrett says - does

Kelly: Well, I'm not going to argue here about it.

Martin: Right.

Garrett: I'm trying to -

Martin: I understand. Well, on this matter of Sims, did Sims at any time suggest to you that you should not tell the fact that he had showed you this letter?

Garrett: Yes.

Martin: When did he ask you this?

Garrett: Maybe not in those words.

Martin: When did he ask you not to reveal this?

Garrett: I think - well now, I can't say whether he did or not. Now, but he did -

Kelly: Let me butt in there, Marv. I think Sims testified that he took the letter to Wakulich and showed it to Garrett.

Martin: Well, he testified this the second time after he was put on the stand the second time in Federal Court he made this statement. When did he mention to you, or give you the impression that he did not want you to mention it to anyone? In the last thirty days?

Garrett: Well, I will say this, yes.

Martin: When in the last thirty days?

Garrett: It was at the hearing.

Martin: At the hearing in Great Bend or in Wichita, which one? The hearing in Wichita or Great Bend?

Garrett: Great Bend - no, the first one here.

Martin: The Wichita hearing?

Garrett: The first hearing.

Martin: And what did he ask you?

Garrett: Well, I had testified and I made a perjury to that effect on letters and when I came back -

Kelly: Well, in that you said you had not seen the letters before -

Garrett: That I had not seen the letter.

Kelly: All right.

Garrett: He said "Keep on denying it, " or something to that effect and said "Keep denying it" - I looked at him -

Martin: Was anybody else present then when he made that statement to you?

Garrett: Uh, Mr. Patton was standing around, but I don't think he heard.

Martin: Was anybody else there?

Garrett: Well, they were all ahead of us - we were - Sims was in one pew, I believe, or row of chairs. I think Patton was up here in the same row or either in the row in behind of us and we were leaving as a group - we were actually behind.

Martin: I see.

Garrett: This is at a dismissal, I think.

Martin: Have you had a chance to talk to Sims since that time that he made that statement to you?

Garrett: Oh, since he made that statement?

Martin: Yes.

Garrett: Yes.

Martin: Had he said anymore about it?

Garrett: We talked at the lunch counter about it, uh, not any great discussion - I told him that - this was after John had testified - John Wak - uh

Martin: Wakulich?

Garrett: Wakulich. And Sims had come in to the lunch counter and he hadn't known that John had testified.

Martin: Did you tell Sims that Wakulich had testified?

Garrett: And I told him - I told him that he had testified that he had shown - you know - shown the letters.

Martin: What did Sims say?

Garrett: "They can't prove it," I think, or some words to that effect.

Martin: Have you had a chance to talk to him any other time or place since that lunch counter conversation?

Garrett: We've had a chance to, but I don't believe we spoke any words.

Martin: You haven't spoken together since then?

Garrett: Well, we might have spoken together - I don't know.

Kelly: Well now, let's see -

Garrett: Because we kept apart after that.

Kelly: Actually, I was thinking you left somewhere. You didn't come to Great Bend and I haven't seen you since the hearing. Now maybe you probably haven't seen Sims since the hearing either, have you?

Garrett: No, I haven't. I don't see him.

Martin: But you have not - you did not appear at the hearing in Great Bend, I noticed.

Garrett: No, uh -

Martin: Was this the reason?

Garrett: It put me in a turmoil. It really, oh -

Martin: So this is the reason you did not appear?

Garrett: Well, one of them, yes, well the reason I didn't appear there was actually I had left this court house sooner than I should have.

Martin: I see.

Garrett: And I wandered around in kind of a daze.

Martin: Have you been gone for sometime from home since this - hearing down here? Have you not been back home?

Garrett: Oh, yeah, I've been home.

Martin: You said you wandered around in kind of a daze.

Garrett: Well, I think two days. Two days.

Martin: I see.

Garrett: I spent two nights in a hotel. Two nights.

Martin: I see.

Garrett: Then I came home.

Martin: All right. You said something about the supervisory questions that we had asked you.

Garrett: Well, you had asked me -

Kelly: Now when are you talking about. It would have to be at the court hearing. All right.

Martin: Are you talking about at the court hearing now or in the deposition when we were talking about the supervisory questions - do you recall which time you are speaking of now?

Garrett: I think in the deposition. I am pretty sure this is in the deposition.

Martin: What question did you have reference to?

Garrett: I believe you mentioned or asked me the question - did Sims give you any order, orders? I don't remember what answer I gave you. It wasn't the right one, I am sure. I tried to make it look like he didn't give me any orders.

Martin: Does he or did he when you worked?

Garrett: He did, yes. He gave me orders.

Kelly: Like what?

Garrett: Uh, to go out and check things, start something on occasion, he did give me orders.

Martin: Tom, have you any personal knowledge or any knowledge yet as to who wrote any of those three anonymous letters?

Garrett: No, I really do not.

Martin: Other than what you have told us before and what you are telling us here?

Do you have any other questions, Pat? I don't.

Kelly: No, and Tom, we appreciate your coming to tell us this.

Garrett: Well, uh -

Martin: Stan, do you have any more - Stan - We might let the record show Stan just stepped out for a moment. Do you have any questions of any kind? He is stepping out again,

I guess. All right, Tom, I don't have any other questions. I appreciate your coming in.

Garrett: I have something else.

Martin: I see. Go ahead.

Garrett: A direct lie. This is going to be embarassing because I know - uh - you asked me about what work and all this I I had done -

Martin: Yes.

Garrett: And I don't know how it went - but it was a lie. The answer I gave you I told you I had - I was self employed -

Martin: Doing painting and this type of thing.

Garrett: Well, the truth of the matter is, Jerry, I haven't done a bloomin' thing to speak of.

Martin: You haven't done anything since the, since the discharge?

Garrett: Maybe for a month and a half.

Martin: What did you do then?

Garrett: I helped my father-in-law in some painting.

Martin: I see.

Garrett: And helping repair a farmhouse.

Martin: Have you not been looking for work?

Garrett: No, I haven't.

Churchill: Are you - Is this the first time you have told anyone this other than, I guess, Henry, maybe, on the way down?

Garrett: I didn't tell him that.

Churchill: Well, any of this that you are telling us now. Did you tell, after this hearing up here, did you tell anyone else about this?

Garrett: No.

Martin: That's what been bothering you, huh?

Garrett: Yeah.

Martin: All right. I, I don't have any more questions unless - is there anything else you want to tell us? Anything else you think of that you want to tell us?

Garrett: Not right off hand.

Martin: Well, let me suggest if there is and you, anything else that you think of that you want to tell us that you are free to communicate with either Mr. Kelly, or I, either one, or Mr. Churchill. All right. I will close the record. It's 4:00 a little after 4:00, about 4:10 it looks like. We started about a little before 4:00 and it is a little after 4:00 now. I don't have anything else, Pat, unless you do.

Kelly: No, I don't either. I think we all welcome your coming.

Martin: Thanks Mr. Garrett.

MEMORANDUM BRIEF RE REINSTATEMENT

It is not mandatory that employees be reinstated. In the landmark United States Supreme Court case in which the power to reinstate was first judicially declared (Phelps Dodge Corp, vs. Labor Board, 313 U.S. 177), the Court recognized that the Board's power of reinstatement was discretionary. As the Court put it:

> "But ever where a worker has not secured equivalent employment, the Board, under particular circumstances, may refuse to order his employment because it would not effectuate the policies of the Act. It has, for example, declined to do so in the case of a worker who had been discharged for union activities and had sought re-employment after having offered his services as a labor spy. Matter of Thompson Cabinet Co., 11 NLRB 1106-1116-17."

This same line of authority has been followed in a much more recent case. (Uniform Rental Service, Inc., 161 NLRB No. 15 [October 20, 1966]). This case states:

> "Shortly, before her discharge, but unknown to Respondent until afterward, Bartlett, without authority, entered Plant Manager Potter's untended office and removed a letter from his desk. The letter was one to the employees concerning the Union, and Bartlett showed it to some of them before its release by Potter. It is unimportant we think that the letter was in fact later distributed to the employees. The question is simply whether or not an employee who improperly enters her employer's private office and pilfers a letter has forfeited her rights to backpay and reinstatement in the circumstances of this case. We think she has." [Emphasis added]

In that case, the National Labor Relations Board found that even though the employee had been fired for Union activity, nonetheless the employee's actions in going into the private property of the management and taking its papers and displaying them to third parties would preclude reinstatement.

Mr. Garrett's statement concerning perjury by himself and statements made to him by Mr. Sims concerning testimony surrounding the anonymous letters are a necessary element to be considered and placed before the Trial Examiner. In view of the fact that this evidence was not made known to Respondent until after trial in the instant action, Respondent respectfully submits that the hearing should be reopened and further evidence taken upon the questions set forth in Respondent's Motion.

Respectfully submitted,
MARTIN & WHOOLEY

/s/ Marvin J. Martin
Attorneys for Respondent

GENERAL COUNSEL'S EXHIBIT NO. 17-C

SUPPLEMENTAL MOTION TO REOPEN
RECORD AND FOR ADDITIONAL HEARING

COMES NOW Defendant and for supplement to its Motion To Reopen Record And For Additional Hearing, states as follows:

1. Statements made by the alleged discriminatee, Garrett, previously filed with the Trial Examiner relating to such matters as "perjury"; a "direct lie"; his being told by his senior operator, Sims, to 'keep on denying it"; and Sims' statement "they can't prove it," raised questions as to the truth and completeness of the evidence before the Trial Examiner.

2. As a result of the statements and admissions of the alleged discriminatee, Garrett, as set forth in Respondent's Motion previously filed with the Trial Examiner, counsel for Defendant submitted to Charles C. Scott, an Examiner of Questioned Documents, the anonymous letters, together with the statements of Russell Sims given to the National Labor Relations Board investigators. Mr. Scott makes the following opinion:

> "In my opinion there are definite indications that the two anonymous letters marked 2A-B and 2C were probably authored by the same person as the reports."

A copy of his complete report is attached.

3. By reason of the statements attributed to Russell Sims by Garrett, such as "keep on denying it" and "they can't prove it." Respondent submits that there are additional questions of truthfulness and completeness of testimony which can only be resolved by reopening the record and having an additional hearing.

4. Instead of questioning the propriety of reinstating a former employee who talked about "perjury" and a "direct lie," the General Counsel apparently wishes to congratulate the man

on his conduct. The responsibility of the General Counsel is a heavy one. He does not sit for a personal litigant in a private litigation; instead, he represents the people of the United States. As such, he does not have a duty to convict, but rather, to seek the truth. (42 Am. Jur., Prosecuting Attorneys, ¶20, and cases cited therein)

5. Instead of attempting to determine the propriety of reinstating a man who "wandered around in kind of a daze" for two days, General Counsel contends that Garrett was not called as a witness because he was "mentally and physically exhausted." If the General Counsel had knowledge before or during the trial of Garrett's condition (which Garrett does not indicate in his statement which has been filed with Respondent's Motion), was there not a duty on the part of the General Counsel to bring this evidence before the Trial Examiner in order that he could make his own determination about the question of reinstating a man in this condition? By reason of General Counsel's failure to submit this evidence, the record before the Trial Examiner is incomplete and we submit that a re-hearing is necessary.

6. General Counsel seeks to avoid the issue of truthfulness in the instant case because the question of falsity is alleged to have arisen "in another proceeding." We submit that the question of truth needs to be determined whether or not untruthfulness is discovered as a result of the instant case or another case.

7. Instead of indicating concern as to the testimony given by Russell Sims or the propriety of reinstating Sims, notwithstanding Garrett's statement that Sims said "keep on denying it" and "they can't prove it," General Counsel avoids this issue entirely. The evidence at the hearing reflected that Sims was a senior operator in charge of Garrett and one other junior operator and that Sims spent eight hours a work day (or night) often alone with Garrett and the other junior operator. If this senior operator, Sims, stated to Garrett that he should "keep on denying it" or "they can't prove it,"

could it not be this statement which caused Garrett to "wander in a daze" for two days? In any event, this additional evidence, newly discovered since the hearing, needs to be placed before the Trial Examiner.

WHEREFORE, Respondent renews its Motion that the record be reopened and additional hearing be held.

MARTIN & WOOLEY

/s/ Marvin J. Martin
Attorneys for Defendant

[CERTIFICATE]

CHARLES C. SCOTT
Examiner of Questioned Documents
1418 Commerce Trust Building
922 Walnut Street
Kansas City, Missouri 64106

REPORT ON DOCUMENT EXAMINATION

March 6, 1967

TO:

Mr. W. Stanley Churchill
Attorney at Law
458 North Market Street
Wichita, Kansas 67202

Re: Kansas Refined Helium Company

Dear Sir:

Following are the results of the document examination you requested in your letter of February 1, 1967:

I. DOCUMENTS EXAMINED:

A. Photocopies of three typewritten anonymous letters marked 2A-B, 2C, and 2D.

B. Photocopies of three typewritten reports signed "Russell M. Sims" marked 1A-B, 1C-D-E, and 1F-G.

II. QUESTION:

Whether any or all of the anonymous letters were authorized by the same person as the reports.

III. OPINION:

In my opinion there are definite indications that the two anonymous letters marked 2A-B and 3C were probably authored by the same person as the reports. I found the following points to coexist in these two anonymous letters and the reports:

A. Format.

Both of these anonymous letters and all pages of the reports typed in block form (no indentations for paragraphs, single spaced, with two spaces between paragraphs.

B. Margination.

Although not identical, the margination in the anonymous letters and reports is similar. This has more significance since the anonymous letters and the reports were not typed on the same typewriter than it would have if they had been typed on the same typewriter.

C. Strike-overs.

There are a number of strikeovers in both the anonymous letters and the reports and there are instances of strike-overs involving the same letters as in the following:

1A, ¶2, line 4: Bickers (B & V).

2A, ¶5, line 17: but (b & v).

1F, ¶1, line 2: thér (e & i).

2A, ¶5, line 5: thér (e & i).

1A, ¶2, line 7: occasdon (o & i).

2C, ¶3, line 1: dn (o & i).

1A, ¶2, line 6: definétdy

2C, ¶1, line 2: completdy

D. Misuse of character

On some typewriters the asterisk "*" and hyphen "-" are on the same typebar actuated by the same key by means of the shift. In several instances at the end of a line there was a shift to capitals, causing the * to print instead of the hyphen and then the - was typed over it, as in the following:

1B, ¶5, line 2: force*

2A, ¶3, line 1: operat*

2C, ¶7, line 3: back*

E. Errors in word division.

The reports and the anonymous letters respectively contain at least five errors in word division at the ends of lines as follows:

1A, ¶2, line 1: agit-ators

1D, ¶5, line 1: stay-ed

1D, ¶5, line 5: re-petition

1E, ¶1, line 10: work-ed

1F, ¶3, line 5: know-ledge

2A, ¶3, line 1: operat-ional

2A, ¶5, line 3: incapab-ilities

2A, ¶5, line 7: forgett-ing

2A, ¶5, line 11: ana-lysis

2A, ¶5, line 21: comp-any

F. Use of both capitals and underscoring for emphasis.

1C, ¶4, line 6: RED TIGER

1E, ¶5, line 4: HE

1E, ¶5, line 5: HE

2C, ¶4, line 4: IT BACKFIRED

2A, ¶6, line 3: HE

1A, ¶2, line 2: <u>all</u>

1E, ¶4, line 1: <u>wanted</u>

1E, ¶5, line 12: <u>know</u>

2C, ¶2, line 1: <u>all</u>

2C, ¶5, line 1: <u>his</u>

G. Misspelling.

On 2B, ¶ 1, line 8 "benefits" is misspelled "benifits".

Several times in the reports the word "benefits" is typed "benifits" and then corrected in handwriting to read "benefits." There are four examples of this in the last paragraph on 1E.

H. Use of single quotation marks.

Not erroneous, but evidence of the same style is the use of single quotation marks for short quotes, such as individual words. Examples:

1D, ¶7, line 1: 'interview'

1E, ¶3, line 1: 'lousy'

2C, ¶6, line 1: 'softies'

2C, ¶4, line 1: 'make points'

I. Misuse of word.

1D: "They boldly stated that they wanted to convince me that their was no need for a union."

2A: "Now when I am around them, their seems to be no other topice of conversation among them."

J. Omission of apostrophe.

1F: "He said that he had put his life and lifes work into this project . . . ."

2A: ". . . this has been a helping factor in the men learning the mans incapabilities."

K. Unusual expression.

1A: "He shook his fist and said that he had the union running scared. . ."

2A: "He very clearly is a man very unsure of his ownself and is running scared . . . ."

L. Sentence lengths.

Anonymous letter 2A-B and 2C together contain approximately 58 sentences and the average sentence length is 22.9 giving a total of approximately 1326 words in the two anonymous letters taken together.

The first approximately 58 sentences of the reports contain approximately 1278 words giving an average sentence length of 22.03.

This opinion is not based upon any one of the similarities above enumerated standing alone, but upon the same combination of similarities which together are, in my opinion, definite indications that the first two anonymous letters and the reports were authored by the same person.

Respectfully submitted,

/s/ Charles C. Scott

CCS:DD

Record and testimony of Russell M. Sims of events and interviews subsequent to dismissal as employee of Kansas Refined Helium Co., George A. Angle, Owner.

SEPTEMBER 13, 1966

Mr. Angle set up interviews for each man working for him. He stated to me that my interview was to be as though I had never worked for him before, and he use this interview to decide if I would be working for him in the future.

He then stated that I had been one of the big union agitators, that all the senior operators were. He said that I had brought Arel Rogers from National Helium with me and Harry Harms from Dickors Refining Co. with me. Both, he loudly proclaimed, were strong union men. I told him that before working for him, Mr. Rogers had been definitely against unions and had on occasion talked about that he could see no reason for anyone to want a union.

Mr. Angle then told me that he would beat the union and that when he set out to do something he always got it done, no matter what the consequences. He said that, "George Angle has never been beaten by anybody, at anything, at any time and wasn't going to start by letting the union beat him. He said that by the time he got through firing people there wouldn't be anybody left to vote for the union.

He hit the wall, shook his finger at me and said that he would put up with no malcontents or anybody that wasn't happy working for him and that he would decide who was for him and who wasn't and he didn't care what the NLRB or the union or anybody else said. He would shut the plant down or sell it or anything else if he had to but nobody could tell him what to do. I told I didn't think anyone was trying to tell him what to do or run his business. Mr. Angle told me the union wouldn't get in, but even if it did he could find a legitimate reason to fire anybody he chose to get rid of, and that he would do so. He shook his fist and said that he had the union running scared and they were already beaten.

He told me that if you grab a tiger by the tail and pull long enough he will turn on you and claw you to bits. He said, "You have got one by the tail".

All of the interview was accompanied by dramatic gestures, fierce looks, grimaces, and a grandiose manner (as the situation demanded) apparently designed to intimidate me. I'm really not sure who he impressed the most, he or me.

He told me that Mr. Sinquefield(a construction supt. for American Messer) had called him the other day and told him that Bill Stahlman, Sims, Rogers, Johnson, and Durbin were the big union agitators. It is difficult to visualize, since the union talk in the plant started after his departure.

Page two - Russell Sims 'interview'

Mr. Klein in our talk and Mr. Angle in the interview both told me that this union thing would be stopped and at any cost. Both stating that their lawyer fee (Norman said Martin) had already cost over $5000. Then Mr. Angle told me how many heartaches and trials he'd had. He said "Russ it would just bring tears to your eyes, it would just make you cry if you only knew all the things that have happened and that I have been through."

Mr. Angle also stated most emphatically that he did not hire any of the original bunch of characters, that they were hired by American Messer and that we all know how he felt about them. He then spent several minutes berating Mr. Joe Wilson (American Mssr. Construction Supt.) and telling how he had cheated and lied, and he let me know in this way how he felt toward me and the rest of the men that Messer had originally hired for him.

Many of the aforementioned statements were reiterated a number of times during the two hour plus interview.

I told Mr. Angle that if he really felt this way about me and that I was not doing him a good job, to tell me right then and either fire me or I would quit. I said, "I will not work for you under those conditions. I can say I have never given the company anything but honest work to the best of my ability, as have most of the other men working for you." He then stated that he hadn't made up his mind yet, but would in the next few days.

The next day we met by accident and he again told me several of the above statements.again. He again, most forcefully stated that by the time he was through, nobody would be left to vote for the union.

Russell M. Sims

1 B

Testimony of Russell M. Sims of events preceeding 'interview' by George Angle.

Shortly after the NLRB hearing, Mr. Angle called me on the telephone. Our conversation lasted for approx. one and one-half hours. I cannot remember all of the statements made, as this was some time ago.

He did tell me that he had not been aware of the seriousness of the problem at his plant, but now that he was,he was going to straighten it all out. He told me that they were working on a benefit policy and also that any wage discrepancies would be taken care of when this union thing was over. He said that no union or anyone else would tell him how to run his business.

He asked me about my signing a union card. I told him I had. He asked me if the union representative had given me a bunch of cards which I had handed out. This I denied. (I had handed out six cards,bbut they were not given to me by the man mentioned).

The most of this conversation was spent in telling me how hard he had worked since the age of ten, how wonderful he had always to all his men, and invited me to ask anyone who worked for him about him. (Since this time I have become acquainted with one of the men who has worked for him for some time) This man told me that "RED TIGER" (George Angle) had always been a cheap, hard outfit and always would be. This statement is only the opinion of one man and therefore could not be construed to be 'cold' fact. He is the only man that I had the opportunity to talk to about Angle.

He also stated, most emphatically, that he had hardly ever fired anyone in his organization and that firing someone was something he had no intention of doing. He said if he were going to fire anyone it would have been Bill Stahlman, that Bill had given them innumerable reasons to fire him. This statement about the reasons was true. I had worked with Stahlman for many months, so I had reason to know. What Mr. Angle did not know was that the day before Bill left his home in Great Bend, Ks. to move to Florida or Louisiana, I visited him to tell him goodbye and good luck. Bill told me that Buddy Owens (then Works Manager) had told him he was to be let go, but they would give him a little time to find a job and then resign. This is what he did.

1 C

Page 2 Russell Sims - events preceeding 'interview'

Mr. Norman Klein came out at midnight the day before my telephone conversation with Mr. Angle and talked to me and Mr. Tom Garrett and Mr. John Wakulich in the control room, while we were on the job. The greater part of the conversation was with me, since the other two men were in and out of the control with their duties. He stayed and talked until 2:30 A. M.

He told me that we didn't need the union because Mr. Angle was an fair and just man and since Mr. Angle had been informed of the troubles and inequities and dissatisfaction at the plant, he had talked with Mr. Buddy Owens, and the other problems would be ironed out.

Norman stated that he was personally working practically all of histime on the benefit program and showed me, out of my own Benefit and Policy book from National Helium (they had borrowed this book from me), that he had deleted, changed, eliminated, and made innovations on the policies in that book. He stated that we would not have nearly as many benefits at National Helium, but a few of them would be better.

He also told me with a great deal of fervor, at least three times during the talk, that Mr. Angle would not fire anybody. That was one thing Mr. Angle did not do. He also gave me the Bill Stahlman bit.

A few days later Mr. Henry Tyler (Operations Supt.) stayed late in the evening with our crew. This is the only occasion that he had ever done this, with the sole purpose of talking to us. He stayed approx. 5 hrs. after everyone else had gone home. His story was merely a repetition of Norman Kleins. They boldly stated that they wanted to convince me that their was no need for a union.

Both Mr. Klein and Mr. Tyler, during these talks, became very confidential and told me that actually, if the union got in, it would make their jobs much easier and take a great deal of work off their shoulders. They both stated that if I ever told it they would call me a liar. They hastened to say that of course they didn't think the union had a chance.

One day in the week proceeding the 'interview', I stopped in the office and told Norman Klein that I had passed out some of the union cards, how I had come by them, etc. I told him that this was the nearest I had come to lying to Mr. Angle and I wanted to straighten it out, that whatever happened in the future, he could not call me a liar.

Page 3 - Russell Sims - events preceeding 'interview'

Norman said he appreciated my telling him and asked me to tell Mr. Angle, because He would respect me for it. I told him I would already have told him if he had been at the plant so I could talk to him. I said that I was not afraid to tell him. Norman then told me that the company had known about the cards for quite some time. Later at Mr. Angles' 'interview', I told him ~~s~~ about the cards. He told me he already knew all about them, about me being a big union agitator, etc. He spent considerable time telling me that he knew all about everybody who worked for him. He said that he had been working for people, and had people working for him since the age of ten, and that experience coupled with his natural ability to understand people, enabled him to find out anything, about anybody.

I told Norman Klien at the time he mentioned that they know about the cards, quote, "Oh, so we've got a stool pigeon". He just laughed it off. Just to make the record clear, we have friends, too, and we soon found out who the tale bearer was.

Some months ago, when the union talk was just getting a good start, I discussed the problems, that the men had been bandying about, with Mr. Buddy Owens. Aside from Buddy, who really set the fire under the kettle with his treatment of them, I discussed the many varied promises and wage discrepancies given to each man when hired. All of them different.

None of the men wanted a union if they felt they could find a way out of their dilemma. None of us wanted a dichotomy in our organization, so I was asked by several of the men if I would go talk to Mr. Owens and see if these problems could be talked about and resolved.

I asked Mr. Owens why we had not received the promised raises and the many times promised benffits. He became very angry and very red in the face and slammed his fist on his desk. He told me that HE would make policy, that HE was running the plant and I wouldn't be telling him how to run the plant. He said I was refusing to take his word that we had benffits. However, he would not spell out any of these so-called benffits. I tried to assuage his anger by telling him that I was not doubting his word in any way, but even if he told me we had certain benffits we would still have to deal with Mr. Angle and Norman Klein. I asked him how he expected the men to know they had any benffits if the company refused to spell any of them out. He then raved at me that he would not do anything what was not alright with Mr. Angle, and he had Mr. Angles' backing in anything he did. Note: Mr. Owens has sinceconveniently resigned. We received no satisfaction.

Russell M. Sims

1 E

Russell M. Sims report of termination.
Sept. 20, 1966, 2:00 PM.

George Angle called six employees of Kansas Refined Helium into his office and fired them, giving them their final checks and their letter of termination. I stayed a few minutes and told him that I felt that he had been unfair to the men and unfair in his judgements.
I told him I wanted to be told face to face, his reasons for firing us. He stated that he had told me before, and that anybody he had any doubts about would be fired. He said this was just the first bunch and that he would get the rest.

He told me again that Mosser had hired the original 'lousy' bunch and he didn't trust any of them. He said he would find everybody that had anything to do with the union and fire them all. He stated, he knew several of them had lied to him, but nobody could fool George Angle, That his knowledge of people was exceptional and that he would find them all.

He said, "I'm going to bring in my people from the oil patch, who have been working for me eight, nine, ten years, people I can trust, to replace you and the others when I fire them." "I'll not keep anybody I'm not 100 % sure about."

I asked him how he could justify his actions and live with his conscience when firing these men and getting innocent men who have families to protect and feed, in the process. He said that he had put his life and lifes work into this project and if he knew that he had even one man he had any doubt about, he would fire all of them to get rid of him. I'm going to start over, just as if the plant were starting now, he said.

He told me that Norman Klein (Plant Manager) and Henry Tyler (Operations Supt.) had gone to bat for me and some of the others. He said they told him my work was excellent and I was a top operator. I asked why the firing then. He said, "I made up my mind I didn't want you, and you caused me trouble at the beginning of this thing, and that's the way it's going to be. I believe you are a top man and have done a good job, but I want to be fair to myself, to you, and to the other men who are still here, so I can't keep you here."

He also told me that some more would be fired, and it might be in two days, a week, or maybe a month, but he would definitely get the rest. He said that he could assure me that he not miss anyone.

I realize these statements cannot be verified, as only Mr. Klein heard a part of them.

1 F

Page two - Russell Sims - Terminationsstatements.

However, they are true, with the wording as exact as possible, which I will swear too. Mr. Angles' actions should in a great measure verify and substantiate the veracity of the allegations and statements made.

Russell M. Sims

IG

DEFENDANT'S EXHIBIT A W.F.T.

Mr. George Angle,

Dear sir:

You have at your Otis Plant a situation of which I feel you should be apprised. Perhaps this is none of my affair, as it affects me indirectly. However, if your plant does not run, it will affect my position.

The information in this letter is either from personal observation or first hand from the people involved.

Until the last few months your personnel, both supervisory and operational maintenance, were very faithful to you and your company in their loyalty. Now, that picture has changed, not to you specifically, but toward the management of your plant.

The man who has assumed the position of plant manager and god, has managed to not only alienate all of his own employeesand supervision, but also everyone in the Airco organization and everyone else who has had the misfortune to deal with him.

Dealing with particulars—he spends all but about an hour of his work day doing operator work and maintenace work out in the plant proper, this has been a helping factor in the man learning the mans incapabilities and losing all respect for the man. He very clearly is a man very unsure of his ownself and is running scared, and is obviously losing his grip. He literally runs like a madman from place to place in the plant, turning valves on the various systems, then blythly forgetting to tell the operators concerned, that he has done so, thereby upsetting the operation (many time badly) and stability of the plant. However, he spends most of his time getting in the way of the people trying to load the gaseous and liquid helium trailers and with the analysis of the products in same. His work in this respect has bee n disastrous. He opens the wrong valves or the right valves at the wrong time, contaminating the contents of the trailers, lines and instruments, as well as Airco's bottles when they are filling. Then runs around trying to correct his mistakes costing the company many hours of time as well as product, meanwhile blaming everyone but himself for his fiasco's. He has qualified, efficient men for those jobs if he would get out of their hair, go back in his office where he belongs and be quiet. The n no one would ever know of his incompetence. His help, his supervision all hate him with a passion, and Airco company people make no bones about their intense hatred for the man and his methods.

On several occasions he has contaminated the bottles and gas trailers and then blames Airco for it, at the same time his own operators have witnessed his errors when HE did so. This is common knowledge. Until recently when talking to your personnel, I heard very little dissatisfaction. Now when I am around them, their seems to be no other topic of conversation among them. From the newest man to the oldest, they laugh about his blunders, many of which he would have fired them for. They laugh, yet they are tremendously unhappy, because he making life miserable for all of them.

2 A

You probably don't realize the full signifigance of losing the type of personnel you have at youwplant, but I have been around a lot of plants and you have, on the whole, one of the most qualified groups of men hhat I have seen, particularly the original group you hired. Of course, you obvioubly ppicked them for their expierience and qualifications, which every plant needs to operate efficiently. How you have kept men of this caliber is rather amazing, considering the conditions, the work load, no benifits, and the wage scale. Many of them are at the present time looking for other employment and no doubt several will be leaving in the near future. This includes youwsupervision. I know the above because theyconfided in me personally. Something has to be drastically wrong when this many good men are wanting to get out.

This man threatens to fire anyone and everyone if they cross him at all, even though they are absolutely in the right on many and most issues. From his Captain Queeg point of view, no one is right but him.

You will no doubt, either ignore this letter, or discount it, but it might be worth your time to investigate the facts for yourself. No doubt none of your men would admit their feelings to you, because, until they have another job ready to go to it would be foolish to do so.

In case you don't think it is serious, one of the top Airco men out at your plant last week, stated after being acquainted only a coupls of days, that he hoped you got rid of him, because he would without question, in a shor?time have a union in your plant, and then their personnel would organize. What he said is an irrevocable fact. Never have I witnessed as much unrest and dissatisfaction as is apparent in every level of your personell, and never have I witnessed more just cause. When you begin to fire these men for trying to protect themselves, remember who triggered the whole thing.

He has cost you more money, literally and cost you much more in these other respects than could be redeemed in a hundred years.

2 B

L-10 A

DEFENDANT'S EXHIBIT R W-3276

TO WHOM IT MAY CONCERN:

If the ultimate purpose of Mr. Angles' speech at the steak dinner was to completely alienate the men working for him at his helium plant - it was a howling success.
They are all extremely disturbed and mad about his outbursts.
Contrary to what he obviously believes, the men at his plant are (on the whole) very loyal to the company and conscientous bout their work, up until the other night.

Many of these men have worked in the oil patch, on section gangs, dug ditch, etc. Now because thyy have, through hard work, diligence, brains, study and in some cases luck, managed to better themselves - their reward, rather than being praised or at least accepted for their small accomplishments, has not been anything but vitriolic abuse.

Admittedly, the man who triggered this tirade was attempting to 'make points' for himself, while running down others with whom he worked. He - being the master goofoff he is and the laziest, poorest worker in his department, but by far the most prolific talker in the group was attempting to further his own personal image int the big bosses sight. IT BACKFIRED.

The men in his plant ha ve known considerable hard work and hardship since being in his employ. Theyworked many hours last winter in the bitter cold, in the howling wind and snow, on some occasions in sub-zero weather, thawing and working on the MEA system and other equipment, in a bitter battle to keep his plant on the line. Ever on top of one of those towers in zero weather, 40 mile winds, with a steam hose? His men have been.

Just the last couple of weeks has seen some of his 'softies' and unfaithful dogs working in nearly unbearable heat for 24 hours and more, straight through, with seemingly unflagging strength to get engines running and keep his plant on the line. Ever inside the crankcase of one of those hot engines, trying to work in 100 degree weather? His men have been.

He apparently has no concept of the type of men he hired. All but maybe two of them are men of integrity, honest, and faithfulness. These men were hired from across the country because of the their experience and educational backgrounds. They have proven themselves to be excellent operators and maintenance men, despite American Messers' attempts to keep them from learning their jobs.

Now, it boils down to the fact that they are not and never will be appreciated because the people in control do not understand that they did not hire illiterate peasants to do a difficult, modern day technical job.

By the way, the men at his plant do know the hardships of the men in the oil patch, and do appreciate them and their work.

2 C

TO WHOM IT MAY CONCERN:

To inform you that the lesson of former actions and the appropriate chastisement fell on deaf ears - the supervision at your plant is up to it's practices. Your future one is also adopting the practices of his still present predecessor, the same domineering, interfering, dictatorial tactics. You can see this will further your cause a great deal.

Another group of brown nosers, dedicated to it - Julian, Foos, Smith, Sims, Ham, Durbin, Call, Myers, Bishop - these men are showing there willingness to do anything to curry favor, a most worthy group of sucks. They do not have the guts to fight for what at least some of them know is right.

If you need any further assistance than the above can give, maybe someone else can be added in the future.

2-D

GENERAL COUNSEL'S EXHIBIT NO. 17-G

* * * * *

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION

GEORGE A. ANGLE, d/b/a
KANSAS REFINED HELIUM COMPANY

Employer

and

Case No. 17-RC-5126

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO

Petitioner

ORDER
VACATING DECISION AND DIRECTION OF ELECTION,
WITHHOLDING NOTICE OF HEARING, AND
PERMITTING WITHDRAWAL OF PETITION

A Decision and Direction of Election herein having issued on August 25, 1966, and the Petitioner herein having requested by letter of May 4, 1967, leave to withdraw the petition herein; and the undersigned having considered the Petitioner's request and the surrounding facts and circumstances.

IT IS HEREBY ORDERED that the Decision and Direction of Election previously issued herein be, and it hereby is, vacated, and that the Notice of Hearing also previously issued herein be, and it hereby is, withdrawn.

IT IS FURTHER ORDERED that the Petitioner's request for leave to withdraw its petition be, and it hereby is, approved.

Accordingly, the instant proceeding is hereby closed.

/s/ Robert E. Allen
Regional Director, Region 17

Dated: May 31, 1967
at Kansas City, Missouri

(SEAL)

EXHIBIT A

[CERTIFICATE]

GENERAL COUNSEL'S EXHIBIT NO. 17-I

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

GEORGE A. ANGLE, doing business as
KANSAS REFINED HELIUM COMPANY

Respondent

and Cases Nos. 17-CA-3021

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO

Charging Party

ORDER DENYING MOTION TO DISMISS and GRANTING
LEAVE TO APPLY FOR RE-OPENING OF RECORD

Respondent has moved that the complaint herein be dismissed, insofar as it alleges that he has unlawfully refused to bargain with the Charging Party, on the ground that the record contains no evidence to establish that the unit alleged in the complaint is an appropriate one for the purposes of collective bargaining.

At the time of the hearing, this issue: whether Respondent's production and maintenance employees engaged in the operation of the Kansas Refined Helium plant constituted an appropriate unit for collective-bargaining purposes, as alleged in the complaint and denied in the answer, was precluded from litigation herein by the Regional Director's Decision and Direction of Election in a related representation case, Case No. 17-RC-5126, in which no request for review on this question had been filed.

On May 31, 1967, upon the application of the Petitioner in the representation case -- the Charging Party herein -- to withdraw its petition, the Regional Director approved the request and ordered that the Decision and Direction of Election in that proceeding be vacated, that the Notice of Hearing therein be withdrawn, and that the proceeding be closed.

Respondent's motion for dismissal is based upon the contention that, with the vacatur of the Regional Director's Decision and Direction of Election "there is no evidence before the Trial Examiner as to the appropriateness of the unit."

The General Counsel's Opposition to the motion points out that a plant-wide production and maintenance unit, with statutory exclusions, "is presumtively appropriate absent evidence to the contrary"; that "the record abundantly supports the allegation of . . . the complaint that the unit is appropriate," and that "Respondent was given full opportunity to present evidence to the contrary . . ." but failed to do so.

Respondent's Reply points out that there are situations in which several operations of a single employer may constitute an appropriate unit and that the General Counsel has the burden of proving every essential allegation of the complaint.

In certain respects, both Respondent and the General Counsel overstate the facts. Contrary to Respondent's statement, the record

is not without evidence relevant to the appropriateness of the unit alleged in the complaint but, on the contrary, there is a great deal of evidence on this subject. The General Counsel, however, is in error in stating that Respondent was given full opportunity to present evidence on this question. While Respondent does not appear to have offered any evidence on this point, several exchanges make it quite clear that he was not abandoning the issue but that his counsel realized that such offer would have been futile in the then-existing situtation.

As appears from the foregoing, dismissal of the refusal to bargain allegations of the complaint would not be justified but, with the deletion of the entire representation proceeding from the record in this case, Respondent becomes entitled to litigate the issue of the appropriateness of the unit on its merits. This he may do either by a supplemental brief based upon the evidence already in the record or, if so advised, by adducing relevant testimony, or by both.

Accordingly, it is hereby

ORDERED, that Respondent's motion to dismiss the complaint, insofar as it alleges an unlawful refusal to bargain, be and the same hereby is denied, and it is further

ORDERED that each of the parties hereto is hereby granted leave to file a motion, within seven days from the date of this order, (a) for permission to file a supplemental brief on the issue of whether the unit alleged in the complaint is an appropriate one for the purposes of collective bargaining; or (b) that the record herein be re-opened for the taking of additional evidence relevant to this issue; and it is further

ORDERED, that any motion to re-open the record for the taking of additional evidence shall be accompanied by a statement, in general terms, of the additional evidence proposed to be adduced and showing the relevance thereof.

/s/ Sidney D. Goldberg
Trial Examiner

Dated: June 19, 1967.

GENERAL COUNSEL'S EXHIBIT NO. 17-K

MOTION

COMES NOW Respondent and requests permission to reopen the record herein for the taking of additional evidence relative to the issue of whether the unit alleged in the Complaint is an appropriate one for the purpose of collective bargaining, and for permission to file a Supplemental Brief on this issue, as provided in the Statement and Order of the Trial Examiner, dated June 19, 1967.

GENERAL STATEMENT OF PROPOSED EVIDENCE

The additional evidence proposed to be adduced and the relevancy thereof, is set forth below in general terms pursuant to the Trial Examiner's Order of June 19, 1967:

> Testimony of employees, management personnel and other persons having knowledge thereof, concerning the general matters set forth below, together with written records, including accounting records, payroll records, personnel records, bookkeeping records, provisions for insurance, workman's compensation and other Company benefits, and letters and communications to employees and management.

This evidence is relevant to show mutuality of interest and similarity in wages, hours and working conditions, together with centralization of management of all Divisions; centralization and common control of labor relations policies; employee interchange among Respondent's Divisions; integration of the operations of Respondent's Divisions; similarity of skills and lack of training necessary for employment in various Divisions; geographical integration and location of Respondent's operations; comparison of the employees' benefits within individual Divisions and among Divisions; the lack of any collective bargaining history and the fact that no other

Union is seeking to represent other portions or Divisions of Respondent; the desire of the employees relative to their right to vote on representation and separation or integration with the common bargaining unit; and the extent or lack of Union organization among the employees.

Respectfully submitted,
MARTIN & WOOLEY

/s/ W. Stanley Churchill
Attorneys for Respondent

Generally, such evidence shall include:

1. Nature of Respondent's overall business.

2. The pattern of growth of Respondent's operations.

3. The method in which all of Respondent's companies operate today.

4. The part played by Respondent's other companies in the formation of the helium plant.

5. The accounting and bookkeeping methods utilized for Respondent's operations.

6. The contact Respondent's other operations have with the helium plant.

7. The manner in which all of the operations are managed.

8. The hiring and working procedure and practice used for all operations.

9. The manner in which Respondent's employee records are processed and kept.

10. The method of establishing labor policies for all employees.

11. The manner in which employees change from working for one trade name company to another.

12. Retention of company benefits by the employees when interchanging from one operation to another.

13. The work performed by present helium plant employees outside of the helium plant area.

14. The skills required to perform the work in all of Angle's operations.

15. Respondent's operations carried on in and around the helium plant at Otis, Kansas.

16. The geographic area covered by Respondent's operations.

17. Coverage and availability of the various insurance policies of Respondent.

18. The benefit programs offered in all the operating companies.

19. Collective bargaining history of Respondent's operations.

20. Desires of the employees concerning this matter.

[CERTIFICATE]

GENERAL COUNSEL'S EXHIBIT NO. 17-R

ORDER REOPENING HEARING

Pursuant to the order herein dated June 19, 1967, Respondent has filed a motion that the hearing be reopened for the taking of additional evidence relative to the issue of whether the unit alleged in the complaint is an appropriate one for the purpose of collective bargaining. The General Counsel has filed a motion to incorporate in the record of this proceeding, and take official notice of, the transcript and exhibits in Case No. 17-RC-5126, and opposes Respondent's motion.

As stated in the order of June 19, 1967, Respondent was precluded from litigating this issue, at the hearing herein, by the then

subsisting Decision and Direction of Election of the Regional Director. The Regional Director's order dated May 31, 1967, vacating the Decision and Direction of Election, altered the record in this proceeding by removing the obstacle to Respondent's litigation of this issue. Accordingly, Respondent is entitled to introduce into this record relevant, material, and competent evidence bearing upon the stated issue and he will be given an opportunity to do so.

The General Counsel's motion that official notice be taken herein of the record and exhibits in Case No. 17-RC-5126 cannot be granted as the proceedings in that case have been stripped of their official status by the Regional Director's order of May 31, 1967. They do, however, continue to exist as a written record of statements made and positions taken by Respondent and the Charging Party herein and, as such, do constitute evidence which the General Counsel may introduce in this proceeding.

Now, therefore, on the foregoing proceedings, it is

ORDERED, that the record in this proceeding be, and it hereby is, reopened, and the parties hereto are directed to appear before me, on the 9th day of August, 1967, at 9:30 o'clock a.m., Central Daylight Saving Time, in the Bankruptcy Courtroom of the United States Courthouse at Wichita, Kansas, for a hearing on the issue of whether the unit alleged in the complaint is an appropriate one for the purpose of collective bargaining or, if changed since the hearing herein, whether it was, between June 30 and September 20, 1966, an appropriate one for such purpose; and it is further

ORDERED, that the Respondent show cause, at the same time and place, why the transcript of testimony, exhibits, and other documents in Case No. 17-RC-5126 should not be included in the record herein as competent, relevant and material evidence on the said issue.

/s/ Sidney D. Goldberg
Trial Examiner

Dated: August 1, 1967.

GENERAL COUNSEL'S EXHIBIT NO. 17-S

MOTION TO REOPEN

COMES NOW Respondent and states as follows:

1. On Saturday, January 21, 1967, following the close of the hearing in the instant case, the attorneys for Respondent, and Mr. Kelly, attorney for the Charging Party, met with Mr. Thomas Garrett, one of the dischargees herein, and discussed the testimony of Mr. Garrett and Mr. Russell Sims before the United States Federal District Court in the companion Injunction case (see Motion To Reopen, filed herein by Respondent on or about February 14, 1967).

2. The dischargee, Garrett, had failed to appear at the Charge case hearing. On pages 7 and 8 of the transcript of the interview attached to the above-mentioned Motion To Reopen, Mr. Garrett made the following statement, showing the reason for his absence:

"Garrett:	And I wandered around in kind of a daze.
Martin:	Have you been gone for sometime from home since this - hearing down here? Have you not been back home?
Garrett:	Oh, yeah, I've been home.
Martin:	You said you wandered around in kind of a daze.
Garrett:	Well, I think two days. Two days.
Martin:	I see.
Garrett:	I spent two nights in a hotel. Two nights.
Martin:	I see.
Garrett:	Then I came home."

3. In the course of depositions which are being taken in the

companion Injunction case, beginning July 27, 1967, evidence has been uncovered that Mr. Garrett has undergone mental treatment as late as 1965.

4. This mental condition was not disclosed to Respondent at the time Mr. Garrett applied for work with Respondent, and Respondent had no knowledge of the same at the time of the hearing. General Counsel did not disclose this mental condition, if known, to the Trial Examiner.

5. By reason of this newly-discovered evidence, Respondent requests that the record be reopened and that Mr. Garrett's mental condition and present capability relating to his work, together with the effect of his failure to disclose such mental condition at the time of his original employment, be heard, in view of the request of General Counsel that Mr. Garrett be reinstated to his former position.

Respectfully submitted,
MARTIN & WOOLEY

/s/ Marvin J. Martin
Attorney for Respondent

[CERTIFICATE]

GENERAL COUNSEL'S EXHIBIT NO. 18

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION

In the Matter of:	
GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY, Employer,	
and	Case No. 17-RC-5126
OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, A. F. L. -C. I. O., Petitioner.	

Room 205,
U. S. Post Office Building,
Wichita, Kansas,
Tuesday, August 9, 1966.

The above-entitled matter came on for hearing, pursuant to notice, at 10 o'clock, a. m.

BEFORE:

WILLIAM R. HOLT, Hearing Officer.

* * * * *

4 PROCEEDINGS

HEARING OFFICER HOLT: The hearing will be in order.

This is the formal hearing of the matter of Kansas Refined Helium Company, Case No. 17-RC-5126, before the National Labor Relations Board.

The Hearing Officer appearing for the N. L. R. B. is myself, William R. Holt.

All parties have been informed of the procedures of formal hearings before the Board by service of a statement of standard procedures with notice of hearing. I have additional copies of this statement for distribution if any party wishes more.

Will counsel please state their appearances for the record.

For the petitioner.

MR. PATTON: Hager Patton, International representative, 8101 South Mead, Wichita, Kansas, Zip Code 60216.

HEARING OFFICER: Thank you.

For the employer.

MR. MARTIN: Marvin J. Martin, 458 North Market, Wichita, Kansas.

MR. CHURCHILL: W. Stanley Churchill, same address.

HEARING OFFICER: Are there any other appearances?

(No response.)

HEARING OFFICER: Let the record show no response.

Are there any other persons, parties or labor organizations in the hearing room at this time who claim an interest in this proceeding?

(No response.)

HEARING OFFICER: Let the record show no response.

Have the parties examined the index and description of formal documents and the formal documents have been marked as Board's Exhibits 1-A through 1-F.

(The documents above referred to were marked Board's Exhibits Nos. 1-A through 1-F, inclusive, for identification.)

HEARING OFFICER: Are there any objections to receipt of Board's Exhibits 1-A through 1-F into the record?

MR. MARTIN: Employer has no objection.

MR. PATTON: Petitioner has no objection.

HEARING OFFICER: Hearing no objections, they are received in the record.

(The documents above referred to, heretofore marked Board's Exhibits Nos. 1-A through 1-F, inclusive, were received in evidence.)

HEARING OFFICER: Are there any motions to intervene in these proceedings to be submitted to the Hearing officer at this time?

(No response.)

HEARING OFFICER: Let the record show no response.

6 Mr. Patton, is it the correct name of the petitioner that which appears in the name filed in the case, Oil, Chemical and Atomic Workers International Union?

MR. PATTON: It is.

HEARING OFFICER: Is your union affiliated with A. F. L. - C. I. O. ?

MR. PATTON: It is affiliated with A. F. L. -C. I. O.

HEARING OFFICER: Thank you.

Are there any objections to having the petition and other formal papers amended so that the name of the petitioner will correctly appear on the captions thereon as Oil, Chemical and Atomic Workers, International Union, A. F. L. -C. I. O. ?

MR. MARTIN: Employer has no objection.

MR. PATTON: Petitioner has no objection.

HEARING OFFICER: Thank you.

Hearing no objections, the amendment is allowed.

Is it possible to stipulate that Oil, Chemical and Atomic Workers International Union, A. F. L. -C. I. O., is a labor organization within the meaning of the National Labor Relations Act, as amended?

Do you so stipulate on behalf of the company?

MR. MARTIN: We will so stipulate for the purpose of this hearing.

HEARING OFFICER: Thank you.

7 Do you so stipulate, Mr. Patton on behalf of the petitioner?

MR. PATTON: We so stipulate.

HEARING OFFICER: Thank you.

The stipulation is received.

Will the company please state its full and correct name for the record.

MR. MARTIN: The company's name is George A. Angle, as I advised Mr. Holt in an off-the-record discussion, Mr. Angle is doing business under a number of different names. I will supply you with those names at this time. In addition to Kansas Refined Helium Company, which appears on the petition, he operates under the name of Red Tiger Drilling Company, Great Plains Drilling Company, Red Tiger Truck Company, Red Tiger Cat Company, Red Tiger Grader Company, Hays Tank Service, Frontier Oil Company--

HEARING OFFICER (interrupting): Frontier Oil Company, what was that?

MR. MARTIN: Correct, Frontier Oil Company. Comanche Supply Company. And these operations constitute a single company, and, in fact, are George A. Angle, doing business as the various trade names listed.

HEARING OFFICER: Could I hear that statement over again, the last statement by Mr. Martin.

(The record was read as follows:

"And these operations constitute a single company,

8 and, in fact, are George A. Angle, doing business as the various trade names listed.")

HEARING OFFICER: Your financial statement there, Mr. Martin, was to the effect that these operations operate as a single company. Is that right?

MR. MARTIN: That's correct. That company is George A. Angle, doing business as the various trade names listed here.

HEARING OFFICER: We'll have a five-minute recess.

(A short recess was taken.)

HEARING OFFICER: On the record.

Mr. Martin, where is Red Tiger Drilling Company located?

MR. MARTIN: Mr. Holt, all these companies are located with their administrative office in Wichita, Kansas, in the Wichita Plaza Building, and that Mr. George Angle's own office and he operates the whole operation, no matter what the trade name may be. There are also other locations throughout the State of Kansas where various personnel or equipment may be located from time to time including a permanent location at Otis, Kansas.

HEARING OFFICER: What offices are located at Otis?

MR. MARTIN: There is a location by the name of Kansas Refined Helium, together with a storage area for, as I understand it, Kansas Refined Helium and other aspects of the total operation.

HEARING OFFICER: All companies are located within the

9 State of Kansas but not necessarily within the same city is that right?

MR. MARTIN: The total operation is spread over the State of Kansas, that's correct.

HEARING OFFICER: As this hearing is concerned with the Kansas Refined Helium Company, Mr. Martin, should that read George A. Angle, d/b/a Kansas Refined Helium Company?

MR. MARTIN: I don't know what your office would dictate, but we would say George A. Angle, doing business as various trade names, including Kansas Refined Helium.

HEARING OFFICER: O. K.

Is there any objection to correcting the name in this proceeding to read George A. Angle, doing business as Kansas Refined Helium Company?

MR. MARTIN: We would object. It is not only that name but the other trade names listed.

MR. PATTON: We would object also.

HEARING OFFICER: You would object to changing the name in this proceeding to changing the name as George A. Angle, doing business as Kansas Refined Helium Company?

MR. PATTON: Yes, we would object inasmuch as we don't care who the owners of the other companies are. We are concerned with Kansas Refined Helium Company.

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: On the record.

Do I understand you correctly, Mr. Martin, you would want the company name to appear as George A. Angle, doing business as Kansas Refined Helium Company and the approximate eight other companies that you named?

MR. MARTIN: Doing business as the trade names which we listed, if there were eight. I listed them in order. I don't know how many there are.

HEARING OFFICER: But the stipulation offered, Mr. Patton, was, that the correct name in this proceeding to show George A. Angle, doing business as Kansas Refined Helium Company as it appears this is the only company involved in this matter?

MR. PATTON: Again, Mr. Hearing Officer, I would state our position that we are not concerned as to who is the owner or how they are doing business. We are concerned with Kansas Refined Helium Company. We, again, believe that Kansas Refined Helium Company, as such, constitutes an appropriate unit for collective bargaining purpose, and again we are not concerned with who owns it or how they do business. We believe the Kansas Refined Helium Company as such is an appropriate unit for collective bargaining purposes.

HEARING OFFICER: For the purpose of this hearing the company will be designated as George A. Angle, doing business as Kansas Refined Helium Company, and the Regional Director will take due note of your objections.

May we stipulate that the petitioner on or about June 29, 1966, in writing, requested recognition as bargaining agent for the employees in the requested unit, and that the company declined at this time to recognize the petitioner as the exclusive bargaining agent for the employees in the unit petitioned for until such time they are certified as such by the Board.

MR. MARTIN: Employer will so stipulate.

MR. PATTON: Petitioner will so stipulate.

HEARING OFFICER: Thank you.

The stipulation is received.

HEARING OFFICER: Mr. Martin, is there any past bargaining history with this company?

MR. MARTIN: No. Again if you are referring to the company, George Angle and various trade names listed, there is no bargaining history concerning any of those trade names.

HEARING OFFICER: Thank you.

Mr. Patton, is this the unit which you are requesting, all production and maintenance employees of the company engaged in the operation and maintenance of its Otis, Kansas, plant?

MR. PATTON: Yes.

HEARING OFFICER: Excluding all supervisory employees, office clerical employees, professional employees and guards, as would be excluded under the Act?

MR. PATTON: Yes.

HEARING OFFICER: You would make no amendments?

MR. PATTON: No amendments, other than referring to the company, as referring to the company as being the Kansas Refined Helium Company.

HEARING OFFICER: Mr. Martin, what is the position of the company?

MR. MARTIN: We would define the unit as all production and maintenance employees including truck drivers and plant clerical employees of George A. Angle operating under the names of Kansas Refined Helium Company, Red Tiger Drilling Company, Great Plaines Drilling Company, Red Tiger Truck Company, Red Tiger Cat Company, Red Tiger Grader Company, Hayes Tank Service, and Frontier Oil Company, excluding office clerical employees, professional employees, supervisors and guards within the meaning of the Act.

In this regard I have omitted the name Comanche Supply Company for the reason that this seems to be a company dealing more in paper than in personnel, and we simply advise you of the fact he is doing business under this name also, but I see no reason it would have to be in the bargaining unit.

HEARING OFFICER: What is the position of the petitioner on such a unit?

MR. PATTON: Mr. Hearing Officer, I would like to direct
13 a question to Mr. Martin and request he explain the nature of the work and the operations of these other employees of the other companies individually are engaged in prior to stating our position.

HEARING OFFICER: Perhaps it would clear things up for all concerned, Mr. Martin. Do you have anyone present that could give us an explanation of the setup?

MR. MARTIN: Yes, Mr. Holt, we will be glad to supply evidence.

HEARING OFFICER: Would you care to call someone at this time?

MR. MARTIN: I might tell you we have more than one man in the corporation, and we are not contending each man has the total picture. It may be necessary to call more than one witness.

HEARING OFFICER: That will be all right.

MR. MARTIN: I would like to call first Mr. George Angle.

Whereupon,

GEORGE A. ANGLE

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Martin) Will you state your name, please.

14 A. George A. Angle.

Q. Your address? A. 70 Stradford Road.

Q. Wichita, Kansas? A. Wichita, Kansas.

Q. Mr. Angle, what is your occupation? A. I am a geologist.

Q. In the course of your business as a geologist do you have employees? A. Yes, sir.

Q. Approximately how many employees do you have?

A. Approximately 100.

Q. Where are these employees located? A. All in the State of Kansas.

Q. Do you have administrative headquarters? A. Yes. The headquarters for all employees is Wichita, Kansas, 1720 Wichita Plaza Building.

Q. What's located in that office? A. Myself, office manager, accounting records and files for all of these personnel.

Q. Are office clerical employees located at that office?

A. Yes, sir.

Q. Who is in charge of the administrative and office clerical work done at that location? A. Mrs. Maxine Starr.

15 Q. What other types of operations do you conduct in addition to the Administrative operations at the Plaza Building? A. Well,

under administration all of our personnel records, insurance, withholding, all checks are written there, everything for all of the trade names that I do business under are processed and paid from there.

Q. You have heard, have you not, the previous statements which I have made as counsel for you concerning various trade names under which you operate? A. Yes, sir.

Q. Are those the trade names correctly listed as I gave them to the Examiner? A. That's right.

Q. Can you tell us what the total complex of your business is, what industries are you involved in? A. The exploration on production of oil and gas, the last endeavor was to construct a plant to refine some of the gas that I had drilled and put on production.

Q. Is that the plant known as the Kansas Refined Helium plant? A. That's right.

Q. When did you begin your operations in Wichita and the State of Kansas as a geologist? A. In December of 1940 I started work as a geological clerk for Sinclair Prairie Oil Company.

16 Q. When did you hire your first employee as George Angle, an employer? A. In November of 1954 I adopted the trade name of Frontier Oil Company and hired Mrs. Starr.

Q. Can you give a brief history of your operation and its growth, the various trade names you have adopted and the expanding influence you have had in the auto gas industry? A. Yes. During 1954 and '55 as a geologist I, under the name of Frontier Oil Company, conducted an exploration program for oil and gas and during those first two years I acquired some production and added personnel in my office and the field. During this time for the drilling of the exploration wells I hired contract drilling companies. In 1956 I bought my first drilling rig.

Q. Why did you do that? A. Because in 1955 I had hired contractors to drill a total of 30 wells which represents a year's work

for one drilling rig, and so I concluded if these drilling contractors were earning a profit drilling wells that I hired them to drill, perhaps I should buy a rig and earn that profit for myself, so I bought a rig and named it under a trade name of Red Tiger Drilling Company.

Q. Did you have personnel on hand and already employed who were capable of and ready to operate that rig? A. Through my oil field experience I had a person in mind.

17 Q. But you had nobody on your payroll at that time? A. No, sir.

Q. Did you acquire a personnel to handle this Red Tiger No. 1? A. I hired Roy McClure to run that first rig.

Q. Did you hire additional personnel to work with that rig? A. Yes.

Q. What was the next piece of equipment or expanding operation which you had? A. In that same year I bought a cable tool unit, a drilling-in unit to complete oil and gas wells that I set pipe on and I designated this by the trade name of Great Plains Drilling Company.

Q. Did you hire additional people to handle that piece of equipment? A. Yes, sir.

Q. Did you have people on hand prior to that time you bought that equipment that could handle and operate it? A. No. In this case I hired people who were experienced and capable of doing it.

Q. Did you integrate these operates into your over-all complex? A. Yes, each one of them is a simple addition under Frontier Oil Company as a geologist, I selected what I wanted to purchase from my Wichita office, Mrs. Starr purchased these

18 leases, and I used Red Tiger Drilling Company to drill the locations, and if they were successful, I used Great Plains to tail the pipes in.

Q. According to the record you previously gave me, you were up to 20 to 25 employees, is that correct? A. That sounds right.

Q. What was your next addition that you had? A. During '57 and '58 I continued to develop additional oil and gas production and added field personnel, field geologists, pumpers, some additional office personnel, and then in '59, I believe, I bought a second rotary rig which I designated Red Tiger No. 2 and hired additional people to work on that rig. In line with itegrating everything under one company, I continued and I was hiring contract truckers to move these rigs, so I started buying my own trucks which I designated Red Tiger Trucking Company. Each of these different names, trade names that I gave these different pieces of equipment had a dual purpose so that, number one, after a year's operation of the rotary drilling rig, for information I had my accounting department keep a record of what my costs of that rig, running that rig was so that we could, at the end of the year I could compare it to what it cost to having it hired done, whether it was prudent to keep this rig or get rid of it. The other reason for the various trade names in the case of all of these endeavors was that Red

19 Tiger Drilling Company, as well as drilling for wells for me, sold services, did contract drilling for other companies, as did Great Plains, so as I added, I hired dirt contractors to level locations and dig pits, I bought a caterpillar and designated it as Red Tiger Cat. I hired dirt companies to build and grade roads so I bought a grader, and designated it as Red Tiger Grader. I added Red Tiger No. 3 and had a second rig added to Great Plains Drilling Company. I hired contract tank truckers to haul water from producing leases and to the drilling rigs, so I bought a tank truck, which I designated Hayes Tank Service. Once again, in all these cases I designate them by separate name as a matter of convenience to cross check and see what that entity did in its contribution to my total effort, and, secondly, a separate trade name to sell services.

Q. When, then, did you get into the gas producing business? A. In 1953 and '54 I had drilled a number of oil wells in southern

Ellis County in Township 15 south and 18 west, and then during 1956 through 1960 I drilled a number of oil wells on this same geological structure, northwest in Township 14 south and 19 west. From the fall of 1960 following the same geological structure to the southwest, I purchased leases in the northeast corner of Rush County which covered an area that gas wells had been drilled and abandoned as early as

20 1928, 1929. These leases were available and I purchased leases on an aggregate of approximately 40, 000 acres starting in the fall of 1960.

Q. Who did the production work for this gas area which you have just described so far as the various trade names are concerned? A. Well, probably the easiest way to follow that is like this. Yesterday Red Tiger Drilling Rig No. 2 was down and needed a location to move to. Geologically I selected a location in Rush County that will be a No. 2 well on the Kansas State gas unit. Red Tiger Cat will dig the pits and prepare the location, Red Tiger Truck is moving Red Tiger Drilling Rig No. 2 to that location today, Hayes Tank Service will haul water for the purpose of drilling the well, field personnel, my geologist will set on the well while it is drilling, the administrative office in Wichita will receive the invoices for our expenses of drilling and we will process and pay them, process and issue the pay checks for the people that are drilling it. If the well is successful, Great Plains Drilling Company will move in and tail the well in. We would then set pipe on it, and Comanche Supply Company would purchase the pipe. If in the drilling of it, if we run the tests, they will take it to the KRH plant.

Q. What is the KRH plant? A. The ultimate plant where the gas will pass through.

21 Q. Kansas Refined Helium Company? A. Yes, they will take this gas to be analyzed to its content of helium, nitrogen, B. T. U., and then after Great Plains will tail the well in, then a combination

of my field personnel, sometimes if the cable tool had no other location, the Great Plains people might work as roustabouts and will lay lateral over to the main trunk line or pipeline which is a gathering system that collects the gas from all these wells and goes down to pipeline which then enters a KRH's processing plant.

Q. How large an area are you speaking of? A. It is spread over an area of 80 square miles, 48 miles of pipeline we have now, but we have eight wells still to connect which we are in the process of starting next week.

Q. An area of, say, eight by ten miles for an area of eighty square miles, and is this located close to Otis, Kansas? A. Yes, three of the producing gas wells are within sight of the KRH plant which is located a quarter to half a mile west of the town of Otis.

Q. After that gas is gathered, you speak of it going to a KRH plant. When did you construct, purchase a KRH plant? A. As I drilled and completed these gas wells, it was an area that was commonly known by the well reports on these old wells in which the gas had a reasonable high helium content, so as I drilled and completed each of these wells, instead of assigning them to a gas purchasing company, I

22 proceeded on leaving them shut in and drilling more until I could possibly develop sufficient gas reserves so that I could, it would be feasible of constructing a plant to refine the natural gas to recover the helium content.

Q. Financially was the production and operation which had gone to this date underwriting the beginning of the helium plant? A. Yes, all my other operations were carrying these shut-in gas wells which I drilled during 1962, '63, '64.

Q. What is a shut-in gas well? A. It is a gas well that's not producing and it is significance to me is that you have the money invested in the drilling and equipping of the well, and it furnishes no income.

Q. Why was it shut in? A. Because I was purposely not assigning them to a gas purchasing company, but continuing to try and drill enough gas wells so that I could establish sufficient reserves so that I could try to interest a purchaser in the helium content, and if I was able to interest a purchaser, then I was going to use that purchase contract as the basis of borrowing money to constructing the helium plant.

Q. Were you successful in doing this? A. Yes.

Q. When did you begin your construction of the helium plant itself? A. In October 1964.

Q. When was that plant finally placed on a producing basis? By that I mean you were beginning to flow the product through to a purchaser? A. Their first helium sale was April 23, 1966.

Q. That plant is in operation now today, is that correct? A. That's correct.

Q. Mr. Angle, approximately how many employees do you have in your total company operation now? A. Approximately 100.

Q. And of those do you know approximately how many are located at the helium plant? A. Insofar as a permanent location at the helium plant, this would be approximately 30.

Q. Do you have personnel that come to the helium plant from the balance of the locations that are not permanently located there? A. Yes.

Q. This is the type of thing you spoke of? A. Yes. In my rotary rigs drilled the water well to bring water into the plant, cable tools have moved in and worked over these wells, my trucks bring equipment for this, a hundred feet west of the southwest corner, the fenced area, Red Tiger drilled a deep well which ultimately will become a reserve gas storage well so that the Red Tiger Cat dug the blowdown pit and reserve fire water pit. It's all coordinated.

Q. Do you now have located there at the plant storage facilities

for the balance of your operation as well as the helium operation? A. Yes. In the eastern part of the plantsite land, I use this as a yard for all of my operations.

Q. Do you have any other yard besides this one? A. We have a small yard within the City of Russell, Kansas.

Q. Previously did you have more yards than this? A. Yes, we had yards in various counties and I consolidated them all to KRH location.

Q. Insofar as these hundred employees are concerned throughout your organization, who has the ultimate control or final control on labor policies insofar as management is concerned? Who manages this? A. I do.

Q. Can you briefly explain how you operate your personnel policies, labor relations policies for your people? A. It would be through a chain of command system, that is, various people that are in charge of different factors of my over-all company. If they have a suggestion, they would make it to me, or if I would question or have suggestions, I would discuss it with them, and so far as benefits or wage pay raises and that sort of thing.

Q. Then each person would make recommendations concerning
25 people beneath him and that would be passed to the next higher level, is that what you mean by chain of command? A. Yes, that's right.

Q. You earlier stated that the various records for all these companies were kept at the main administrative office of your total operation at the Wichita Plaza Building. Let me ask you about your own personnel income tax record, for example. Is that a single record for this total operation? A. That's right. It is an income tax return for myself and wife, just like one return. Arthur Young & Company prepared it.

Q. You testified that your payroll checks up there were prepared and signed in your administrative office. Whose name appears on those payroll checks? A. Mine or Mrs. Starr, we the two people who sign the checks.

Q. This is a true fact whether it is a man located in Otis, Kansas, or whether it is a man drilling a well, is this correct? A. Yes. We only have -- the chcks go out of Wichita for the Wichita personnel, all the personnel in Kansas, all the people that work for me.

MR. MARTIN: Mr. Holt, as I indicated, it will be necessary to call various witnesses. You will want to ask questions and have cross-examination. We do have other witnesses.

26 HEARING OFFICER: O. K. Thank you.

Do you have any questions of Mr. Angle at this time, Mr. Patton?

CROSS-EXAMINATION

Q. (By Mr. Patton) How many maintenance and production employees do you have in your Kansas Refined Helium operations?

MR. MARTIN: He is going to have to define that, Mr. Holt, or we are going to have to object. I am not sure who he is including in production and maintenance.

MR. PATTON: I am including all production and maintenance employees, mechanics and electricians, excluding office clerical employees, supervisory employees, guards, and professional employees. A. I'll answer you like this. The total employees at the KRH plant that work in the plant, exclusively, as of today, total 26. Of that 26, in my opinion, three would be supervisory, so this would leave 23, in answer to your question.

MR. MARTIN: Mr. Holt, I would like that to be checked in the record. We have no objection to submitting the record, names of the people and stating our position.

HEARING OFFICER: Good.

MR. MARTIN: This is a little difficult for this witness to do on a memory basis.

Q. (By Mr. Patton) Mr. Angle, you stated that pay checks for all your employees are issued from your Wichita office.

27 Are the payroll checks for each of the individual companies issued as George A. Angle Company or in the name of the individual company, such as a Red Tiger Drilling Company, the Kansas Refined Helium Company, and so forth. Are they issued in the name of each individual company? A. No, they are not. As a convenience for our own banking and accounting purposes, Frontier Oil Company checks are the pay checks that are issued to Red Tiger Drilling Company, Red Tiger Truck, all companies. We have one other account, one other form of check, which is KRH check, and the reason for the KRH check is because with each of the gas wells I produce that furnishes the raw gas that goes down my pipeline to be refined, I must make payments to the land owner for their rights, so we have a KRH check which we pay the land owners, which we issue to our KRH employees, which I also used to purchase supplies, equipment, during the building of the plant and since then.

Q. And for accounting purposes, the account of KRH operations is kept separate from your other operations? A. No, sir, you misunderstand. It is not kept separate except for an information basis, as is my drilling companies in Great Plains Drilling Company, all various trade names, all of it, as was pointed out for income tax purposes. It could all be carried under one name, George Angle, for income tax purposes it becomes one return for myself and my wife.

28 For information purposes the only reason--it is not separately accounted for, no.

Q. In communications going out from your Wichita office on letterheads, are they issued under the name of different companies or are they all George A. Angle Companies? A. They are issued

under the various stationery of for each company, for example, Red Tiger drilled wells for Champlin, Continental, various companies, and there is Red Tiger stationery these contracts were bid on. KRH, as we buy equipment, as we correspond with Air Reduction, our main customer now, this is on a KRH letterhead. These trade names have some significance as far as sales to other people, and as these companies' trade names are in existence, they gradually establish a trade name relationship so that these people are familiar with them.

Q. Do the employees of KRH or at your KRH plant, do they assist in the other operations, such as assist in drilling of the wells, truck driving or anything like that? A. They don't assist in drilling the wells. For example, Al Pesicka is located at the plant. He handles production from the gas wells to monitor the gas wells, flow of gas, feed gas coming through a pipeline to the plant.

Q. Is he carried on the payroll of KRH or carried on some other payroll? A. In our accounting system his expenses are

29 attributed to KRH.

MR. PATTON: No further questions.

MR. MARTIN: Mr. Angle, I have one other question.

REDIRECT EXAMINATION

Q. (By Mr. Martin) You stated Mr. Pesicka's expense is attributed under your accounting system to KRH. Is it not true his check comes out on a Frontier check? A. Yes. He was a driller for Great Plains Drilling Company, and at that time we only had one check until we acquired all of the mineral owners under the gas wells that are providing gas for all the plants when we instigated our KRH check, and we just never have actually transferred--

Q. (Interrupting) The fact that an item comes out on a particular check, it does not indicate that it comes under that operation, does it? A. None whatsoever. It's all mine.

MR. MARTIN: No other questions.

HEARING OFFICER: Off the record, please.

(Witness excused.)

(Discussion off the record.)

HEARING OFFICER: On the record.

We will recess for one hour at this time and will resume at 1 o'clock.

(Whereupon, at 12 o'clock noon, the hearing was recessed, to reconvene at 1 o'clock, p. m. the same day.)

30 AFTERNOON SESSION 1 p. m.

HEARING OFFICER HOLT: On the record.

MR. MARTIN: We'd like to call Mr. Norman Klein as a witness.

HEARING OFFICER: Counsel wishes to call Mr. Klein.

Whereupon,

NORMAN KLEIN

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Martin) Will you state your name, please.

A. Norman Klein.

Q. Where do you live, Mr. Klein? A. Wichita, Kansas.

Q. Are you associated with the George Angle Company, sir?

A. I am.

Q. In what capacity? A. I am comptroller over the entire organization. I am general manager of the helium plant.

Q. And your function as comptroller, do you have general charge or control of the financial accounting records of the company?

A. I do.

31 Q. There has been some discussion earlier concerning the method of accounting between the Kansas Refined Helium operation

and other operations being carried on within the George A. Angle business here. Can you explain to us how this accounting procedure works? A. Yes, I can. The best way, I suppose, to explain this is just as I do with any new accountant that comes into our office. We're similar to a store which has various departments in it. We keep for information purposes a record of what each department does, all culminating to a grand total of what the over-all store does. This is, in essence, what each of our departments does, Red Tiger Drilling, Red Tiger Cat, Frontier Oil, all our departments do. I'll give you an example of this. These companies are interchangeable in that one company works for another. As Mr. Angle stated, the reason for these companies was a need or necessity. Well, the well we are just about to start on right now, the new gas well, if a producing well, will be connected to our pipeline which will feed the plant.

Q. Let me interrupt you, Mr. Klein. Did you hear the analysis given by Mr. Angle concerning this operation and how this would work? A. Right.

Q. Was the way he commented on this substantially correct? A. Yes, it was.

32 Q. Let me ask you, for accounting purposes, what goes into the Kansas Refined Helium account when you are segregating the thing out, so at the tail end, at the end of the year you make some final judgment, you can determine what accounts spent what money. What all goes into Kansas Refined Helium's operation? A. Into Kansas Refined Helium Company would be the cost--I am going to start at the well now--the cost of obtaining the lease from the land owner, rentals paid on these leases, the cost of drilling the well and by the cost of drilling the well, I mean Red Tiger's salaries, Red Tiger Drilling salaries, Red Tiger's bid bill, their fuel bill, their drilling mud bill, any travel expense in connection of this well.

Q. Does this include the employees' salaries who are out

there on the well doing the physical work? A. This is Red Tiger Drilling Company's salaries.

Q. Do you include hourly rates also? A. Hourly and supervisory, it also includes the cost of Red Tiger Trucking Company, the cost of that company would be Red Tiger Truck salaries. This is hourly and salaried employees, the cost of tires for the truck are allocated to the wells, they are charged to the helium plant. The geologist's salary who sits on the wall, his auto expense, meal expense,

33 hotel expense. Red Tiger Cat, the salary of the driver who goes in and cleans off the location are charged to the company. The grader--

Q. (Interrupting) What do you mean by the plant, the helium plant? A. The helium plant. The grader driver who fills the road into the location are charged to the plant. The materials that we purchase, for example, the casing, the tubing, the master runs, the meter on the well, the valves, fittings and other things of this nature are charged to the plant. The cost to go of Great Plains Cable Tool Company to tail this well in, these people's hourly wages are charged directly to the plant. The administration of all of the paper work in the Wichita office is charged to the plant. The cost of the pipe itself, which we will then leave to the main trunk line and the cost of the welders, cost of the ditching, getting right of ways, these are charged to the plant. I'm sure I have left out some, but --

Q. In other words, is it a correct statement that the costs, hourly and salaried rates of the people, of the seven, eight or nine trade names here, working in the helium field, transporting equipment, drilling, equipping and moving and bringing water and building, gathering lines are all charged to Kansas Refined Helium for accounting purposes? A. That is correct.

Q. But when this is all completed then it still gets back

34 to one man, George Angle? A. That is correct.

Q. Do you have any other clerical people in your organization,

Mr. Klein, other than the office clerical people located in the Wichita Plaza Building? A. I don't quite know what you mean by clerical.

Q. Let me ask you, do you have a man by the name of Leon Myers at Otis? A. Yes, we do have.

Q. What is his function? What is his job? A. His job is to, most of his time is taken up making up production reports which are sent back to the Wichita office. He types up purchase orders for employees who give him the various--they will write down on a piece of paper what they want to order and who they want to order it from, and he will type it up and it is sent to Wichita for signature. He also keeps inventory on our spare parts.

Q. Does this Mr. Myers come under the control of the plant supervision or the office supervision at Wichita? A. He comes under the supervision of the plant.

Q. Where does Mr. Myers carry on his activities?

A. At Otis, Kansas.

Q. Does he come in and carry on his activities in the Wichita operation? A. No.

35 Q. As opposed to the kind of records Mr. Myers works with, what are the type of records you work with in the Wichita office?

A. The accounting department and clerical department in Wichita handles such duties as computation of payroll, preparing all disbursements, all invoices to third parties for sales or services performed, they handle all disbursements, I think I may have mentioned that, all invoices from vendors are received, coded, classified in Wichita. Some are received in the plant, but forwarded to Wichita for processing, all the production reports that Mr. Myers prepares are sent to Wichita for final culmination and gathering of the data where we then interpretate the data he has gathered for us.

Q. Do you have any other plant clerical people in your organization besides Mr. Myers? A. No.

Q. All the balance of your people are office clerical located at the Wichita Plaza Building, is that correct? A. That is correct.

MR. MARTIN: For the purpose of the record, Mr. Holt, it is our contention Mr. Myers will be a plant clerical employee and a proper member of the unit.

Q. (By Mr. Martin) Mr. Klein, at the Wichita, Kansas, office do you keep the application forms, for example, for employees

36 who wish to participate in your group insurance plan? A. We do.

Q. Do you also keep the employees' withholding information and W-form in the Wichita office? A. Yes, we do.

Q. How about the employees' W-4 form, is that kept in the Wichita office? A. It is.

Q. What about the general payroll journal showing pay which has been received by employees, is that kept at the Wichita office? A. Yes, it is.

MR. MARTIN: Will you mark this as Employer's Exhibit 1, please.

(The document above referred to was marked Employer's Exhibit No. 1 for identification.)

Q. (By Mr. Martin) I am going to hand you, Mr. Klein, what has been marked as Employer's Exhibit 1 and ask if you can identify that, please? A. Yes, sir. It is what we call an individual earnings record.

Q. I note that it is in two parts. In essence the original instrument is a front and back of a single sheet, is that correct? A. That is correct, it is actually one sheet.

37 Q. Is this particular instrument we have referred to as Employer's Exhibit 1 kept for the various employees of your company? A. Yes, every individual employee has an earnings record.

Q. Where is that record kept? A. In Wichita.

Q. At your-- A. (Interrupting) At our office.

Q. At your administrative office? A. Yes.

Q. Are you acquainted with Mr. Harold Foos? A. Yes, I am.

Q. I note that in the upper left-hand corner of Exhibit 1 that shows department notation in exhibit has the letters RTD No. 2 scratched out and beside it a notation KRH. Can you tell me what that change refers to? A. Yes. RTD No. 2 stands for Red Tiger Drilling, No. 2 rig. It has been scratched out and beside it has been inserted KRH, which refers to Kansas Refined Helium. This indicates that Mr. Foos was originally with Red Tiger Drilling No. 2 and is presently situated at Otis, Kansas, at a helium plant.

Q. Can you tell by look at this approximately when Mr. Foos made the change? A. In May.

38 Q. Of 1966? A. Right.

Q. Does this indicate, then, that if a man is in one of your departments and moves to another department, you continue the same record for that man and cross out the prior department and insert the new department? A. That is correct.

Q. This is a continuing sheet for the employee regardless of the trade name the man operates under? A. That is correct.

MR. MARTIN: Mr. Holt, we would like to introduce this as Employee's Exhibit 1.

MR. HOLT: Are there objections to receiving Employee's Exhibit 1?

MR. PATTON: No objections.

MR. HOLT: There being no objections, it is received.

(The document above referred to, heretofore marked Employer's Exhibit No. 1, was received in evidence.)

Q. (By Mr. Martin) Is it common for you to have employees switch from, one employee to switch from company to company? A. It has been common for us to have them.

Q. This is the only one concerned with the Kansas Refined Helium, is that correct? A. That is correct.

39 Q. You have been operating Kansas Refined Helium for how long? A. Since the middle of April we got into operations, approximately the middle of April of 1966.

Q. Are you familiar, in general, with the total operation of George Angle throughout the various types of work being done, such as drilling, trucking and helium plant and so forth? A. Yes, I am familiar with it.

Q. Can you tell us the different types of skills and work which are being performed in the total complex? A. Well, there's virtually every kind of skill involved in our over-all picture. The person who shovels, digs a ditch, we have welders, we have truck drivers, we have drillers, we have geologists, accountants, engineers.

Q. Do you have some highly skilled people in your various operations? A. Yes, we do.

Q. Will you give us an example of some of the more highly skilled people? A. A geologist would be a highly skilled person.

Q. Would an instrumentman be a highly skilled person? A. Yes, he would.

Q. Would a custodian be a highly skilled person? A. No, I don't think so.

40 Q. Would a man who dug trenches at a drilling site be a highly skilled person? A. No.

MR. MARTIN: I am going to ask that we mark this as Exhibit No. 2 for the employer.

(The document above referred to was marked Employer's Exhibit No. 2 for identification.)

Q. (By Mr. Martin) Mr. Klein, I am going to hand you what has been marked as Exhibit No. 2 and ask if that is a list of some of the more recent employees who have been hired to work in the

Kansas Refined Helium plant during the last few months.

A. Yes, these are some of the more recent employees.

Q. Does the prior company and the kind of work which are shown in the last two columns indicate the company for whom the employees worked before he came to your company and the kind of work he was doing there? A. Yes, sir.

Q. I note that, for example, Mr. Call, the first man, worked for the Marlette Coah Company as an assembly man at a dollar thirty-five an hour. Do you know what that company is? A. Yes, I do.

Q. What is it? A. They make trailer houses.

41 Q. Mobile trailers? A. Yes. I believe that's it.

Q. What about Mr. James Foos, Beech Aircraft, working as a machinist before he came to work for you, is that correct?

A. Yes, sir.

Q. I note Mr. Harold Foos, the third man, was working as a Red Tiger driller, is that correct? A. Yes.

Q. And there seems to be a number of other types of work here. For example, I see a laborer, a sheetmetal man, a station manager, apparently a filling station manager. Can you tell me from the names that are here what type of work those people are performing for your company now? Can you take those men and tell us what they are doing for you? A. I think I can tell you most all of what they are doing.

Q. What is Mr. Call doing for you? A. Mr. Call was hired to do custodial work, more or less janitor service.

Q. No particular skill, then, with what he is doing for you, correct? A. No.

Q. What about Mr. James Foos, what is he doing for your company now? A. James Foos, he's a junior operator.

42 Q. Would you explain what a junior operator is?

A. A junior operator works for the senior operator. There are three men on a shift. He takes his instructions from the senior operator.

Q. I guess we'd better have you explain what a senior operator is. A. A senior operator is in charge of the plant.

Q. Do you have three shifts at the plant? A. Well, we have four shifts actually. Three shifts during a day and one rotating shift. We have four different crews.

Q. Do you have a portion of the personnel that are present only during the daytime? A. Repeat that, please.

Q. Are part of your personnel at a plant only present at the daytime? A. Yes.

Q. But the plant itself operates on a 24-hour, seven-day a week basis? A. That's correct.

Q. Explain to me what a senior operator is, what his function is? A. His function is to keep the plant running.

Q. All right. A. In laymen's language.

Q. Does the senior operator have underneath him junior
43 operators? A. That is correct, he has two junior operators underneath him.

Q. Is that a number which must stay the same or is it possible that number could increase or decrease? A. It could well increase.

Q. Under what circumstance? A. When we establish a need for more personnel, we would have more personnel for this.

Q. If you would have a higher production would you need more people? A. This is one thing, higher production, increasing personnel, maintenance could be lower, various things of that nature.

Q. This man, Mr. Foos, was a junior operator for you and was formerly a machinist. Will you explain what he does in his work? A. Well, his job is to--

Q. (Interrupting) And, incidentally, if this is beyond your area of knowledge-- A. (Interrupting) I could give my opinion on it.

Q. Why don't we wait and have another man testify.

As far as labeling these people, do you know what he is doing for your company now? A. He is a junior operator.

44 Q. What about the man who was an instrument mechanic for Great Northern Oil? A. He is our instrumentman.

Q. He came across that in the same general function?

A. Basically his job remains the same.

Q. I see Merle Smith was a laborer before he came to work for you. What does he do for you? A. He is a junior operator.

Q. Mr. Weinman was a sheetmetal man with Beech Aircraft. What does he do for your company? A. He is also a junior operator.

Q. What about Mr. Bishop who formerly was a technician?

A. A junior operator.

Q. What did Mr. Barrett do for you? A. He is a junior operator also.

Q. What about Mr. Tittel? A. He is an electrician.

Q. That is what he previously did, is that correct?

A. Yes, he did, he worked on the construction plant.

HEARING OFFICER: Excuse me. Did I get this clear here, that Mr. Call is a custodian?

THE WITNESS: Yes.

HEARING OFFICER: Custodian?

THE WITNESS: Yes, sir.

HEARING OFFICER: I am going to call the names of the

45 junior operators. Stop me if I am wrong. James Foos, Harold Foos, Dwayne Johnson.

THE WITNESS: No, sir. He is an instrumentman.

HEARING OFFICER: Dwayne Johnson is an instrumentman. Merle Smith.

THE WITNESS: Yes.

HEARING OFFICER: Ron Weinman.

THE WITNESS: Yes.

HEARING OFFICER: Russell Bishop.

THE WITNESS: Yes.

HEARING OFFICER: Barrett.

THE WITNESS: That's correct.

HEARING OFFICER: O. K. Thank you. And Tittel is an electrician.

THE WITNESS: Tittel is an electrician, yes, sir.

Q. (By Mr. Martin) Mr. Klein, do you keep a truck at KRH? A. Yes, sir, we keep two trucks there.

Q. What kind of trucks are they? A. One is a pickup truck which we formerly used on the pipeline which we are locating there, and the next is a Hayes Tank Service truck which is a wench truck with a gin pole on the back.

Q. Is it left permanently there at the Otis plant location? A. It has been permanent there for the last year. Other operations do use it, come in and borrow it.

46 Q. Do the people that work there at the helium plant drive these trucks? A. Yes, they do.

Q. Is there any difference in driving one of those trucks and driving a truck for one of the other operations? A. No, sir.

Q. You have pickup trucks in your other operations? A. Yes, sir.

Q. What about moving of various pieces of material from one place to another? Do your people at KRH have that responsibility? A. You mean inside, where are you talking about moving equipment to?

Q. As far as they are doing it, not where, do they move things from one place to another? A. Oh, yes; yes.

Q. Can you describe the type of equipment they might move? A. They may need to move a pump from one part of the plant to the

maintenance building for repair, they may need to go to the plant yard to get a piece of pipe, to build something with. They use it in general for just any type of operation.

Q. I note that you have a number of these people who were just described on Employee's Exhibit 2 without any particular back-ground of skill. Are these some of the people who would perform

47 these some physical parts of the work? A. It could be any one of the people at the plant.

Q. I see. What other kinds of equipment, if any, have your other operations brought and left over around the helium plant?
A. Well, on our plant yard itself, we'd had the cat there, the grader there, we keep, in the yard we keep tank batteries, we have had our cable tool unit there, we've had our rotary rig drilling water wells on the plant and gas input wells. Virtually all our equipment has touched our plant.

Q. In other words, by our equipment you mean equipment from other trade named operations? A. Yes. By Hayes Tank Service, Red Tiger Drilling, Red Tiger Trucking.

Q. Is there any welding done at a helium plant? A. Yes, there is.

Q. Do you do welding in the other operations of George Angle companies? A. Yes, we do.

Q. Who does the welding? A. We have one man who has been doing welding in the plant and we have had contract welders in the plant.

Q. Who does the welding at a drillsite, do you know?
A. We have had contract welders for the drillsite. On occasion we have used the welder on the plant to do various jobs for us in other of the different trade names.

48 Q. Mr. Klein, when you have a man who moves from one of your trade named operations to another, does he retain any benefits which he built up? A. Yes, he retains all his benefits.

Q. If a man were entitled to two weeks' vacation because of his being with the company a certain number of years and he transferred from one of these groups to another, would he retain that right to the additional benefit? A. Very definitely, he would.

Q. Would that be true of Mr. Foos? A. Yes, it will. In fact, I think he's on vacation now.

Q. He drew his accumulated vacation from the entire period, not just from Kansas Refined Helium? A. If he didn't, he will get two weeks' vacation.

Q. Mr. Klein, what about your Workmen's Compensation policy, is that a single policy covering all the George Angle operation? A. Yes, sir, it is.

Q. Covering all the employees? A. Yes, sir.

Q. Do you have group life insurance privileges at that company? A. Yes, we do have.

Q. Is this the same policy for the total George Angle complex?

49 A. Yes, it is.

Q. Do you have life insurance policies of some kind? A. Health, you say?

Q. No; life. A. We have life.

Q. Is that a common or single life policy covering the total George Angle complex? A. Yes, it is.

Q. What about other types of insurance, the one covering your equipment, is that a single policy covering the entire fleet? A. Our single insurance policy covers all companies. It is one policy.

Q. What about your program on other benefits? Let's take, for example, vacations and holidays. Do you have exactly the same benefit program for all your various trade name operations? A. No; they are exactly the same in some operations and different in other operations.

Q. In those various groups they have been acquired at different times, as I understand Mr. Angle, is that correct? A. That is correct.

Q. Have you had any discussions or made any move to consolidate and moving toward a consolidated system on the other fringe
50 benefits that are not the same? A. Yes, we have.

Q. How long ago? A. I am estimating now, but I would say three years, three years ago, three or four years ago we started to move.

Q. What moves have you taken to consolidating these into single type of fringe benefit program? A. A uniform vacation plan, uniform holiday. Of course our health insurance, and this was one and the same.

Q. Historically in the oil fields had you not had vacation and holidays? A. That's correct.

Q. But are you moving and have you moved in the last few years to start operating those vacation and holiday grants?
A. The vacation grants are the same throughout the company, and holiday we have started moving toward a uniform holiday throughout the whole organization.

Q. Let me ask you about the hours of work for the various trade named groups throughout the company. Are you familiar with that? A. Yes, I am.

Q. Let's start with Kansas Refined Helium plant. What about your operating crews out there? Do you know what the hours of work is there? A. Yes, the hours of work for the operating personnel is 8 in the morning until 4 in the afternoon, 4 in the after-
51 noon until midnight, midnight to 8 the next morning.

Q. This is seven days a week? A. Seven days a week, yes.

Q. You apparently have three shifts seven days a week for the operating crew? A. The fourth shift will enter into this.

Q. You don't keep the same men on seven days a week, but the plant is open and you have three shifts per day? A. That is correct.

Q. You have the shift that floats so people can have time off each week? A. That's right.

Q. How about your maintenance people at the plant. What hours do they work? A. Maintenance works daylights only. I believe right now it is from 7 o'clock in the morning until 3:30 in the afternoon with a half hour for lunch.

Q. Does the operating crew take time off for lunch?
A. They eat on the job.

Q. They are paid? A. They are paid for the full eight hours. Nothing is deducted for lunch.

Q. How about your instrumentmen at the plant? What hours do they work? A. I believe they are working from 8 to 4:30 with
52 a half hour off for lunch.

Q. What about this plant clerical man out there, this Mr. Myers, what hours does he work? A. I believe he works from 8 to 5 with an hour off for lunch.

Q. You have three groups that are working only during the day, maintenance, instrument and plant clerical? A. That's correct.

Q. But none are working the same schedule? A. That is correct.

Q. You have one group, operating crew that works around the clock, so to speak? A. Yes.

Q. Let's move to some other area. Let's take your drilling people. What hours do they work? A. They work, one shift starts at 7:30 in the morning and breaks tour at 3:30 in the afternoon. The next tour comes on at 3:30 in the afternoon and breaks tour at

11:30 at night, and the next tour comes at 11:30 at night and breaks tour at 7:30 the next morning.

Q. You do not have the same hours among your various operations, that is a fair statement? A. Yes.

Q. Do you know whether or not the drilling people take time
53 off for lunch? A. They are the same as the operators, they eat their lunch while they are working.

Q. And they are paid for the full shift, aren't docked for any lunch time? A. That's correct.

MR. MARTIN: I believe that's all at the present time.

HEARING OFFICER: Do you wish to offer the exhibits?

MR. MARTIN: I wish to offer that as Exhibit 2 for the employers.

HEARING OFFICER: Any objection to receiving Exhibit 2?

MR. PATTON: We believe it is immaterial and irrelevant, but we have no objection.

HEARING OFFICER: It is received.

(The document above referred to, heretofore marked Employer's Exhibit No. 2, was received in evidence.)

HEARING OFFICER: Are there any questions of Mr. Klein on cross-examination?

CROSS-EXAMINATION

Q. (By Mr. Patton) Where do you live right now?

A. I own a home at Wichita, Kansas.

Q. Have you moved your household goods to Otis?

A. I have moved some of my household goods.

Q. At the plantsite, is the plant fenced? A. What part of the plant are you speaking of?

54 Q. The plantsite, the plant itself. A. The plant, there is a fence, yes, sir.

Q. Is the storage area inside the plant fence or outside the plant fence? A. It is located right next to the gasoline tank at the plant.

Q. It is inside or outside? A. No, it is outside.

Q. Outside the plant fence. You have spoken of the different accounting system. Are there tax advantages in the accounting system? A. Well, sir, we have to--we are allowed twenty-seven and a half per cent depletion on oil and gas produced out of the ground. Now, the government requires us to keep separate account of these various wells and also of the enterprises, so they can determine we are entitled to the twenty-seven and a half per cent depletion.

Q. There are tax advantages, then? A. Tax requirements.

Q. Are there tax advantages to the separate accounting systems? A. No.

MR. PATTON: No further questions.

Q. (By Hearing Officer) Mr. Klein, you mentioned senior operators at the plant there. How many senior operators do

55 you have? A. We have four senior operators.

Q. Are they classified, or would you try to give us some ideas as to what a senior operator does, what are his duties? A. I would like to defer that question to Mr. Tyler. I am afraid I can only give you an opinion.

Q. O. K. Thank you.

Mr. Harold Foos is on vacation, is that right? A. I think he is on vacation.

Q. Mr. Tyler would be more familiar with that? A. Yes, he would.

Q. And the helium plant began operations in approximately May 1966? A. The last part of April 1966.

Q. April.

HEARING OFFICER: I have no further questions of the witness.

You are excused.

(Witness excused.)

MR. MARTIN: Mr. Holt, as I recall when we bagan, Mr. Patton indicated he wanted some information as to whether or not he wanted to make a stipulation. I think we have presented enough to get to that point. I would like to see if he is going ahead with the stipulation or if he was not. I would imagine at this point we have no further evidence.

56 HEARING OFFICER: At this point?

MR. MARTIN: Yes.

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: On the record.

While we were off the record the petitioner has stated its position on the unit.

Would you state that for the record, please, Mr. Patton.

MR. PATTON: We now enter a motion to amend our petition to include plant clerical employees, and our position is that the petition, as amended, the unit petitioned for constitutes an appropriate unit for collective bargaining purposes, being Kansas Refined Helium Company.

HEARING OFFICER: Will such a unit be acceptable to the company?

MR. MARTIN: We have no objection to plant clerical. The balance of our differences appear to still be no different.

HEARING OFFICER: The petition will be amended to include plant clerical employees, and is it my understanding we have one, Mr. Leon Myers, is that correct?

MR. MARTIN: That is correct, unless Mr. Patton has someone else that I do not know of.

MR. PATTON: I know of no one else.

HEARING OFFICER: O. K., thank you.

57 MR. MARTIN: We would like to call Mr. Henry Tyler.

Whereupon,

HENRY TYLER

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Martin) Mr. Tyler, would you state your name, please. A. Henry Tyler.

Q. Where do you live? A. 1318 McArthur Road, Great Bend, Kansas.

Q. Where do you work? A. I work in Otis at the Kansas Refined Helium plant.

Q. What is your function there? A. I am plant engineer. As such I supervise the operations of personnel and evaluate and determine the correct manner in which to operate the plant.

Q. At that location you have some people who are known as senior operators, is this correct? A. Yes.

Q. I am going to read you a list of names and see if these are the people we are discussing. Mr. Harry Harms, Jimmie Ham, Russell Sims, and Arel Rodgers. Is that the list of senior operators

58 you have at the helium plant? A. Yes.

HEARING OFFICER: Excuse me. What is Mr. Rodgers' name?

THE WITNESS: Arel, A-r-e-l.

Q. (By Mr. Martin) Mr. Rodgers is in the courtroom, is that correct? A. Yes.

Q. Will you explain how your operating crews work as far as their around-the-clock basis is concerned? A. The senior operator is in charge of the shift, he runs the plant during that shift. He

supervises the manipulations, operations, of the entire plant and of the two personnel who work for him.

Q. What do you describe or how do you describe the two persons who work for the senior operators? A. They are junior operators.

Q. The senior operator is there at times when he has other personnel at the plant and then at times he is there alone, is that correct? A. Yes.

Q. The operating crews work around the clock seven days a week? A. Yes.

Q. The balance of your personnel at the plant only work daylight hours during the week? A. Yes.

59 Q. When did the senior operators actually take over control and begin to operate this plant? A. American Messer., the contractor on the job, had the responsibility of the operations in to May, I believe. I may be incorrect. It was in May that they left, and at that point the senior operators gained the responsibilities for operations during their shift.

Q. Prior to that time had your senior operators exercised any or some authority over control of their people? A. Yes. The normal procedure was the Messer man told the senior operator what was to be done and he would relay to his people what was to be done.

Q. As I understand, your people who were the senior operators were on the Kansas Refined payroll, but they had a contract manager from Messer who was on the over-all management of the company at that time, is that right? A. Yes, that is correct.

Q. Did you during the course of the period before American Messer left the scene had occasion to have the senior operator complain to you concerning his relation with the people beneath him? A. Yes.

Q. Can you tell us when this happened? A. I believe it was in November.

60 Q. Who did it involve? A. It involved senior operator Russell Sims and a junior operator who is no longer there, Bill Stalman.

Q. Will you tell us just what occurred? A. Senior operator had instructed him to crawl inside a tank and clean it out, and he refused.

Q. Stalman refused? A. Yes.

Q. What action was then taken, if any? A. The senior operator the next day reported it to me. At this time the contract manager from Messer was in charge, Mr. Bill Wilson. I in turn reported to him. He did nothing, I don't think, for a few days. However I talked to Stalman within a couple of days.

Q. What did you tell Stalman? A. I told him he worked for the senior operator and that he was in charge and he would do whatever the senior operator told him to do.

Q. Did you tell him what the results would be if he didn't follow the senior operator's instructions? A. That he wouldn't work there.

Q. Subsequently to that did Stalman resign? A. Yes.

Q. After your senior operators took over control in the spring of 1966, did you have occasion to talk with one or more of them

61 concerning their responsibility to the George Angle company? A. Yes. About that time when they were to assume the responsibilities we held reviews, gave raises, and at that time I, each individual, I went over their performance, went into facts that we were there to make money, their opinions and ideas were necessary, and part of their jobs were this, to give us opinions and ideas to help us save money, turn it into personnel, operations, unnecessary operations, time-saving methods, et cetera.

Q. Did you tell them whether you considered them a part of management? A. Yes.

Q. What did you tell them? A. As far as we were concerned, they were part of management and this was part of their responsibility.

Q. Will you explain what the responsibility of a senior operator is when he is there, let's say, from midnight at night until 8 o'clock in the morning by himself and with his two subordinates?
A. He supervises the subordinates in several operations that are necessary as a standard procedure. For example, we have absorbers and dryers that must be changed every eight hours, every forty-eight hours. He determines when they should be changed. He tells the junior operators to change them. He monitors that they do this. He
62 watches the control panel, makes necessary manipulations to keep the plant operating in an efficient manner, and in some cases, just to keep it operating.

Q. Are you aware of the-somewhat of the cost of equipment that is under the control of the people? A. Yes. It would be in the area of $4,000,000.

Q. Are you aware of the amount of money involved in a daily run of production that goes through the hands of these operators?
A. I am not aware of the prices we receive for our products, but I would guess it would be in the order of $20,000 a day.

Q. Assuming it is several thousand dollars a day, do the operators have the authority to shut down the operation when in their judgment it is necessary, when they are there at night?
A. Yes, very much no.

Q. Has it happened, as a matter of fact, not only do they have an authority, have they carried out that authority? A. Yes.

Q. Do these senior operators have the authority to call back other personnel if they have a problem at night and need a man?

A. Yes. I would clarify that by saying a maintenanceman, instrumenman, and in a couple of cases in the past when we have lost
63 most of the plant and a large number of people were needed to get it back on, I left standing orders they call some of the people who live close to the plant.

Q. In normal places they can call these instrument people and that type of people when they are needed? A. Yes.

Q. Do you have a call-out provision if a man is called out other than his normal shift, he receives a certain amount of paid time? A. He receives a minimum of four hours.

Q. After that four hours is up, is it up to the senior operator to tell him how long he is needed on the job and release him when he's through? A. Yes.

Q. When pay raises are given to the subordinates of the senior operators, are those prospective pay raises discussed with the senior operator? A. Yes.

Q. How is it discussed? Give me an example. A. In one case I had talked to him formerly several times, with the senior. I put through the raises. They were approved. I then got to the senior operator, Russell Sims, and reviewed with him the people's qualifications, their attitudes, their over-all performance. He made his comments, his criticisms. Well, not only criticisms, but his--

Q. His evaluations, is that the word you are seeking?

64 A. His praises, perhaps that's a better word. I then went with him, we told the people of their raises, commented on their good performance and bad performance, and Russ was there through the whole period. On other occasions it has not been quite in that manner. On Arel Rodgers' shift, he had a man who was deserving of the raise, he spoke to me several times of it. We then gave the raise. I talked to Arel but did not, we did not give the man a call together.

Q. Do you take the raises involved--I beg your pardon. Do you take the recommendations and evaluations of senior operators into account when you make your decision relative to raises for the people? A. Yes.

MR. MARTIN: Would you mark these, please, as Employer's Exhbits Nos. 3, 4, 5, and 6.

(The documents above referred to were marked Employers' Exhibits Nos. 3 through 6, inclusive, for identification.)

Q. (By Mr. Martin) I am going to hand you what has been marked as Exhibits Nos. 3, 4, 5, and 6 for the employer and ask if you can identify them, tell me what they are. A. These are timecards that the operators fill out which we collect and send to the home office in Wichita.

Q. Are these representative of timecards which have been prepared and contained weekly?

65 Q. I note in the right-hand corner of each of the exhibits your signature appears, and that with your signature there is either an initial or a name also signed, and in the left-hand lower column there is a signature. On the left-hand column it carries the words "Employee's signature," and these appear to be the timecards for John Harris and Harold Foos on Exhibit 4, Tom Barrett on Exhibit 5, and James D. Foos on Exhibit 6. Can you tell me whose initials appear on Exhibit No. 3 in the right-hand corner, where it says "Approved"? A. Those initials are Arel Rodgers.

Q. Is it on No. 4, J. Ham, would that be Jimmie Ham, a senior operator? A. Yes.

Q. Exhibit 5, Sims, would that be senior operator James Sims? A. Yes.

Q. And H. H., would that be Mr. Harms? A. Yes.

Q. Did the senior operators approve the time sheets of their subordinate workers and pass them to you for approval?

A. Yes.

MR. MARTIN: We would like to offer Exhibits 3, 4, 5, and 6.

HEARING OFFICER: Are there any objections?

66 MR. PATTON: No objection.

HEARING OFFICER: Exhibits 3, 4, 5, and 6 may be received.

(The documents above referred to, heretofore marked Employer's Exhibits Nos. 3 through 6, inclusive, were received in evidence.)

Q. (By Mr. Martin) Mr. Tyler, is it necessary, then, that these senior operators approve work and use their discretion in scheduling work, calling out employees and so forth? A. Yes.

MR. MARTIN: Mr. Holt, we are going to be asked that these four people be declared as supervisors, and that, of course, has been the purpose of the information which we have elicited from the witness.

We have no other questions at this time.

I might say this, we are also willing, Mr. Holt, to show that the other employees in the balance of the companies, we would contend would be supervisory and give that information.

HEARING OFFICER: Thank you, Mr. Martin.

What is the position of the petitioner?

MR. PATTON: I missed his statement. I beg your pardon.

HEARING OFFICER: The company's position, as I understand it, is that they would exclude senior operators, four of them.

67 Is that correct?

MR. MARTIN: That is correct.

HEARING OFFICER: As supervisors.

MR. PATTON: His position that these employees, we hope to establish they put in eight full hours of productive work in operations and they properly belong in the appropriate bargaining unit.

HEARING OFFICER: We will receive your evidence in just a few moments.

Off the record.

(Discussion off the record.)

HEARING OFFICER: On the record.

Will you proceed, Mr. Martin.

MR. MARTIN: May I have just a moment, Mr. Holt?

HEARING OFFICER: Yes.

MR. MARTIN: I have prepared an exhibit which I think will set it out as easily as--are you asking of the total of all companies or only of Kansas Refined?

HEARING OFFICER: Kansas Refined.

MR. MARTIN: All right. Let me give you that list. Mr. William Owens, Mr. Henry Tyler, Mr. John R. Stiff.

Before we are through we would like to get the whole thing in and you may extract from it what you like.

Would you mark that as Employer's Exhibit No. 7.

(The document above referred to was marked Employer's Exhibit No. 7 for identification.)

68

MR. MARTIN: We would offer this Exhibit No. 7, Mr. Holt, as listing the people we believe to be supervisors in the various trade name operations.

HEARING OFFICER: Mr. William Owens listed under employees listed as working for Kansas Refined Helium. What is his position?

THE WITNESS: He is plant manager.

HEARING OFFICER: And Mr. John Stiff?

THE WITNESS: He is maintenance engineer.

HEARING OFFICER: Mr. Harry Harms?

THE WITNESS: Senior operator.

HEARING OFFICER: Ham, Sims and Rodgers are all senior operators, is this correct?

THE WITNESS: Yes.

HEARING OFFICER: Does petitioner have any objection to receiving the company's Exhibit No. 7?

MR. PATTON: Petitioner does have objection to receipt of company Exhibit No. 7 based upon our position that the--that Harry L. Harms, Jimmie F. Ham, Russell M. Sims and Arel L. Rodgers properly belong in the appropriate unit for collective bargaining purposes.

HEARING OFFICER: Your objection will be noted by the Regional Director.

Exhibit No. 7 will be received.

69 (The document above referred to, heretofore marked Employer's Exhibit No. 7, was received in evidence.)

HEARING OFFICER: Mr. Tyler, the seven names listed on Exhibit No. 7 and the nine names listed on Employer's Exhibit No. 2, would that be the total complement of employees at Kansas Refined Helium Company?

THE WITNESS: No.

HEARING OFFICER: What other names should be added there?

THE WITNESS: I would have to look at a complete list. Exhibit No. 2 only lists the employees recently hired. We went through two periods of hiring people, one initially when we were staffing the plant. We added some people, I am not sure of the dates. We started in December, I believe, and these are people we have hired since then.

HEARING OFFICER: That gives a total of 16. Who are the older employees at the plant?

MR. MARTIN: We don't have any objection to giving a list.

HEARING OFFICER: That's what we'd like to have.

MR. MARTIN: That's what you are after.

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: On the record.

MR. MARTIN: Mr. Holt, pursuant to your request, the

70 company has prepared and I will hand you as Employer's Exhibit No. 8 a list of the personnel connected with the helium plant operation. We do not have additional copies. This has been prepared by hand at your request. We would like to have a right to obtain a copy of the same and submit it.

HEARING OFFICER: All right. Your request will be noted.

MR. MARTIN: Will you mark that as Exhibit No. 8.

(The document above referred to was marked Employer's Exhibit No. 8 for identification.)

HEARING OFFICER: Assistant operator, that is the same as junior operator, right?

THE WITNESS: Right.

HEARING OFFICER: Is there any objection to petitioner looking at this exhibit?

MR. MARTIN: No. It's in evidence. We have no objection.

MR. PATTON: I have no objection to this.

HEARING OFFICER: Is there any objection to the receipt of Employer's Exhibit No. 8?

MR. PATTON: Mr. Hearing Officer, I would like to direct a question, if I might, with respect to two of the employees listed on the employee list. I believe there is a total of twenty-six employees shown on the exhibit as such. My question relates to Mr. Joseph Riedl and Mr. Charles Myers as to whether they are full-time employees or part-time employees.

71 HEARING OFFICER: Are you directing that question to Mr. Tyler?

MR. PATTON: I would like to direct it to someone who can answer. Mr. Tyler, since he's in the chair.

THE WITNESS: They are part-time employees for this summer.

MR. PATTON: By that would you say they are part-time temporary employees?

THE WITNESS: Perhaps when I said part time it was misleading. They work full time for the summer. They work 40 hours a week, wight hours a day.

MR. PATTON: They are considered temporary employees?

THE WITNESS: Yes, since they will go back to school in the fall. This would not say we would not use them next summer, however.

HEARING OFFICER: That is Riedl and--

MR. MARTIN: Joseph Riedl and Charles Myers.

Let me ask you a question, if I may, Mr. Tyler.

Q. (By Mr. Martin) Did not one or both of these employees work at the plant last summer? A. Charles Myers worked there last summer. I am not sure about Riedl. I don't know.

Q. You are not sure about Riedl.

HEARING OFFICER: They did work, they do only work during summer months, school vacation, right?

72 THE WITNESS: Yes.

Q. (By Mr. Martin) Do you know where they stand in school, whether they have graduated from school or not? A. They are both juniors this year, I believe, this coming school year, in college.

Q. So if they were to complete their college course they would have next summer to work on a seasonal basis, is that correct? A. Yes.

MR. PATTON: Last summer when they worked were they employed by Kansas Refined Helium or American Messer?

THE WITNESS: American Messer.

HEARING OFFICER: Is that spelled Messer?

THE WITNESS: Yes.

HEARING OFFICER: Mr. Patton, do you have any further questions of Mr. Tyler?

CROSS-EXAMINATION

Q. (By Mr. Patton) Other than the day shift, do you have shift supervisors other than a day shift? A. They are senior operators.

Q. You have no shift supervisors as such other than a senior operator? A. The senior operator is the shift supervisor.

Q. What portion of this time of an eight-hour shift is devoted
73 to supervision of other employees? A. I don't think you could put a percentage number on it by any means, at least I couldn't. It is a continual function of his to see his people are doing the right things and performing the functions that have to be done.

Q. Does he engage in productive work in the operation of the plant during his eight hours? A. He doesn't leave the control room. I am not sure what you mean by productive work. He works certainly.

Q. Does he have control of the operations from the control room? A. Yes, he makes the necessary manipulations on the control board to operate the plant efficiently.

Q. And keep it in production? A. Yes.

MR. PATTON: No further questions.

HEARING OFFICER: Is there anyone who has higher authority in the plant, say, at night?

THE WITNESS: No.

HEARING OFFICER: The senior operator is in authority there, is that right?

THE WITNESS: Yes.

Q. (By Mr. Patton) Are there people of higher authority subject to call? A. Certainly. Any unusual circumstance, I would expect to be called.

74 HEARING OFFICER: Are you finished?

MR. PATTON: Yes.

HEARING OFFICER: Who hires the employees for Kansas Helium?

THE WITNESS: The plant manager, W. E. Owens. We recognize and discuss several together. He actually processes the applications and does that work.

HEARING OFFICER: Where is Mr. Owens' office located?

THE WITNESS: In Otis.

HEARING OFFICER: And he hires employees only for Kansas Refined Helium, is that correct?

THE WITNESS: Yes. Some of the past employees, to my understanding, was hired by Norm, I believe, Norm Klein.

HEARING OFFICER: At the present time the policy is Mr. Owens hires the employees and he hires them for Kansas Refined Helium Company?

THE WITNESS: Yes.

HEARING OFFICER: And all of those employees are paid with checks carrying the name Kansas Refined Helium Company, is that correct?

THE WITNESS: Yes.

HEARING OFFICER: And the employees listed on Employer's Exhibit 8 as employees of Kansas Helium, they do perform their duties in the plant at Otis, Kansas, is that correct?

THE WITNESS: Yes, primarily. They have on occasion gone
75 outside the plant.

HEARING OFFICER: What type of occasions?

THE WITNESS: On one occasion some pipe came in for Red Tiger Drilling. Our maintenance people went over and unloaded it. On another occasion our welder, these are recent occasions, our welder went across over to a farm owned by Mr. Angle and welded a fence.

HEARING OFFICER: Other than that, his primary duties was not that, that was personal?

THE WITNESS: As I say, they have on occasion gone outside. Another type of occasion would be, we have received material recently bought, while they have been added. We send the invoice to the home office. Our people might deliver them to the wellsites.

HEARING OFFICER: Do any of the senior operators have anything to do with the hiring of employees?

THE WITNESS: They have on occasion given recommendations about people, on people with whom they worked previously.

HEARING OFFICER: They will give recommendations. If an applicant came in that none of the senior operators knew, would they be called in, interview the prospective employee?

THE WITNESS: No.

HEARING OFFICER: Do they have the power to fire employees?

THE WITNESS: No. At one time we talked of this, and we

76 felt a better way to handle it would be if any time there was a disagreement of the nature I testified before, the best way to settle it was immediately call me, regardless of the hours, and we would settle it in that manner.

HEARING OFFICER: O. K. I have no further questions of Mr. Tyler.

Do you or anyone, Mr. Martin?

MR. MARTIN: Yes, I have a question.

REDIRECT EXAMINATION

Q. (By Mr. Martin) As I understand it, as far as your senior operators are concerned, you do take their recommendations on these items, although they themselves don't carry out the actual hiring or firing, is that correct? A. Yes. If a situation were to occur on a firing, we felt that he should have the authority, and their recommendation would certainly be considered. However, since they

are in direct supervision and have to work with the people from there on, the actual firing should be done by their supervisor, myself or the plant manager.

Q. Their recommendation would carry more weight than anyone else in the plant? A. Yes; surely.

HEARING OFFICER: How are your senior operators paid?

THE WITNESS: They are paid hourly.

77 HEARING OFFICER: And the junior operators are paid hourly?

THE WITNESS: Yes.

HEARING OFFICER: Is there a substantial difference in the hourly pay?

THE WITNESS: The average hourly pay for the seniors is three eighty-five. The average for the juniors would be approximately, I might clarify it here. We have two levels within junior operators. Those who have been with us from the beginning and this new group. It would be either two fifty or two seventy-five. I am sorry. Two seventy-five or three. From the original hire, the original people we raised from two fifty to three. I am sorry. Two seventy-five.

HEARING OFFICER: The senior would receive eighty-five cents more than a junior operator?

THE WITNESS: Yes, normally. The pay rate I mentioned does not include any shift difference.

HEARING OFFICER: Let's see. How is the vacation of the senior operators, are they on the same vacation schedule as the other employees?

THE WITNESS: They get the same amount of vacation. However they pick their vacation schedule first. In other words, they go, if we have a choice between sending the senior operator or junior operator, the senior would go first. They have an option or taking paid vacation.

HEARING OFFICER: Do juniors have the same choice?

78 THE WITNESS: Yes. In fact, it was mentioned on Harold Foos, he having transferred in has two weeks' vacation, having been with the company longer, he elected to, he had the choice to take it all, to take half of it and be paid for the other half, or be paid for all of it.

HEARING OFFICER: O. K. What do you have there, a weekly or monthly pay period or what?

THE WITNESS: A two-week pay period.

HEARING OFFICER: Ending on what day?

THE WITNESS: Sunday, midnight.

HEARING OFFICER: Any particular Sunday, or just every two weeks on Sunday?

THE WITNESS: Just every two weeks on Sunday.

HEARING OFFICER: When did the last payroll period end?

THE WITNESS: I don't know. I can't recall when I got my check.

HEARING OFFICER: Payroll period ended on Sunday, the 31st, and we're paid on the 5th.

THE WITNESS: We originally were going to pay on Wednesday following the pay period, however, it was transmission in getting the checks into Wichita and getting the checks back, particularly on holidays, so we moved it out to give us more time so we could say it is pay day and make sure they got their checks on that day.

HEARING OFFICER: O. K. None of the employees listed on

79 Employer's Exhibit No. 8 would normally do work for any of the other employer's companies, is that correct?

THE WITNESS: Not normally, except there are exceptions.

HEARING OFFICER: It would be in extreme emergencies when they did do work for them, is that it, or--

THE WITNESS: (Interrupting) I wouldn't say it would be extreme emergency. Just a need.

HEARING OFFICER: Does it arise very often?

THE WITNESS: Several examples I gave you have occurred.

HEARING OFFICER: Say, for instance, unloading of pipe you mentioned. How long did that take?

THE WITNESS: It took two maintenancemen, a grader part of the day.

HEARING OFFICER: How often would they have to unload a load of pipe?

THE WITNESS: That's the only occasion that I know of.

HEARING OFFICER: I have no further questions of Mr. Tyler.

RECROSS EXAMINATION

Q. (By Mr. Patton) Mr. Tyler, would you designate on the employee list those employees who are paid by salary, monthly check, salaried check.

MR. MARTIN: That's on the list that has already been supplied as an exhibit. There are a number of hourly supervisors

80 shown on Exhibit No. 7. Kansas Refined Helium Company four, Tiger Drilling shows six, Great Plains Drilling is one and Hayes Tank Service shows one. That would be a total of twelve paid hourly.

HEARING OFFICER: The general manager, plant manager and plant engineer, maintenance engineer, O. K. The plant clerk, O. K.

You are excused, Mr. Tyler.

(Witness excused.)

MR. MARTIN: We have no other evidence at this time, Mr. Holt.

HEARING OFFICER: Before we leave this, could we areee-- well, we'll come to this a little later.

Mr. Patton, do you have any evidence to present at this time?

MR. PATTON: We would call Mr. Arel Rodgers for testimony.

HEARING OFFICER: Mr. Rodgers, will you take the stand, please.

Whereupon,

AREL L. RODGERS

was called as a witness by and on behalf of the Petitioner and, haveing been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Patton) For the record will you state your name?

81 A. Arel L. Rodgers.

Q. You are employed by whom? A. Kansas Refined Helium.

Q. For how long? A. Just about over a year.

Q. And what is your position with Kansas Refined Helium?

A. I am a senior operator.

Q. As a senior operator are you recognized as being part of management or supervisory employees by other employees in the plant? A. Well, I'd find it a bit difficult for me to answer for them, but in my own mind I never considered myself in that position.

Q. What are your functions as a senior operator, Mr. Rodgers? A. Again it is my opinion, I am sure, but primary is the control room, and control of the plant, and along with that is the seeing that the operation is the best that we can do, production is best, the best we can do.

Q. Is your eight hours spent in productive work in the operation of the plant? A. I like to think it is.

MR. PATTON: I will pass you a document which the union would ask be identified as Union's Exhibit No. 1.

(The document above referred to was marked Petitioner's Exhibit No. 1 for identification.)

82 Q. (By Mr. Patton) I ask you to identify that document,

what it is and on whose stationery it appears. A. Well, it is Kansas Refined Helium and it is from Wichita, the office.

Q. Is that a letter received by you? A. Yes, it is, yes.

Q. Does that letter contain a background of the company?

A. Well, yes; yes, it does.

Q. Does that letter show other companies owned by Mr. Angle?

A. Not as pertaining to us, no, there is no division there. I mean it's--it was written to those men in the plant.

Q. As Kansas Refined Helium? A. Kansas Refined Helium employees, yes.

Q. Does it make reference to companies owned by Mr. Angle?

A. Yes, it does make reference to them.

Q. Does it list the employees of Kansas Refined Helium?

A. Well, I will have to look. I don't remember. Well, it does list not all of them but one or two, yes, some of them. Just a moment. There is a whole list, a complete list, yes, it does.

Q. With the exception of Mr. Norman Klein's name, does it reflect the complement of employees at the Kansas Refined Helium plant? A. Well, there is one that is no longer employed there, a

83 Mr. Sloan, and I do not see Norman's name on here.

Q. Mr. Sloan, whose name appears on the list of Kansas Refined Helium, has left the employment of the company? A. Yes.

Q. And Mr. Norman Klein's name does not appear here?

A. I don't see it here.

MR. PATTON: I hand you a document dated July 27, 1966. Will you mark that, please.

(The document above referred to was marked Petitioner's Exhibit No. 2 for identification.)

MR. PATTON: Mr. Hearing Officer, in respect to these documents, these are individual documents that were received by the employees. We do not have copies. Presumably, since it came from the company, they would have copies of these documents.

HEARING OFFICER: Do you have any objection to the receipt of Petitioner's Exhibit No. 1?

MR. MARTIN: We would like to have an opportunity to determine whether it was the same letter sent by the company, but if it is, we have no objection to it.

HEARING OFFICER: Petitioner's Exhibit No. 1 will be received and additional copies will be furnished.

MR. PATTON: Yes.

HEARING OFFICER: Thank you.

(The document above referred to, heretofore marked Petitioner's Exhibit No. 1, was received in evidence.)

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Q. (By Mr. Patton) Handing you a document which has been marked Petitioner's Exhibit No. 2--

MR. PATTON: We find ourselves in the same position with respect to copies. Additional copies will be furnished to the Board.

MR. CHURCHILL: And us also. We would like copies also.

Q. (By Mr. Patton--continuing) --and ask you, Mr. Rodgers, to identify that document. A. It is a letter I received on Kansas Refined Helium stationery.

Q. Does it indicate the company as to which it originates from? A. Yes.

Q. Is that the company you work for? A. Kansas Refined Helium, that I work for.

MR. PATTON: We would introduce that document as Petitioner's Exhibit No. 2.

HEARING OFFICER: And the purpose of this document is for what?

MR. PATTON: I beg your pardon?

HEARING OFFICER: What is the purpose?

MR. PATTON: It shows the independent status of Kansas Refined Helium Company.

85 MR. MARTIN: With the same comment made on the last one, not for the purpose stated, but the document must speak for itself.

HEARING OFFICER: O. K. Thank you.

The exhibit will be received.

(The document above referred to, heretofore marked Petitioner's Exhibit No. 2, was received in evidence.)

HEARING OFFICER: Additional copies will be furnished the Board and employer.

MR. PATTON: They will.

Q. (By Mr. Patton) Mr. Rodgers, is that intermingling of the employees of Kansas Refined Helium Company with employees of other companies that might be owned by Mr. Angle? A. As far as-- there is no intermingling whatsoever, in my mind there has never been.

Q. There has been testimony given with respect to a storage yard at Kansas Refined Helium premise. Is that storage yard inside or outside the plant fence? A. As far as the plant proper, it is outside of the plant proper fence.

Q. The plant proper fence, it is enclosed by the fence? A. There is a barbed wire fence enclosing the total piece of ground there on that side of the road. No, not even that. In parts of

86 it there is. For the most part, as far as the plant proper is concerned, there is nothing other than KRH material there to the best of my knowledge.

MR. PATTON: No further questions at this time.

HEARING OFFICER: Mr. Martin.

CROSS-EXAMINATION

Q. (By Mr. Martin) Mr. Rodgers, there are parts of the plant operation that are outside of the fence you speak of, aren't there, like your gas, your tank, some of your water, and so forth?

A. Outside of the fence, the outer of the perimeter of the plant is fenced in, and outside of that is a pair of water wells, and a fire pond, and pump, also a gasoline tank.

Q. Are those items used in connection with the helium plant? A. Yes, they are.

Q. Is this same fence, storage yard, is also outside of it, as you put it, is that right? A. Would you give me that question again, please.

Q. The storage yard is also outside of this fence, is that correct? A. Yes, it is.

Q. Mr. Angle owns a piece of property, there is a storage yard, and various items you just mentioned outside of a fence. Within the fence there is part of the plant proper, is that a correct statement?

87 A. There is a plant fence. The total plant is inside with the exception of the items mentioned.

Q. That's right. The mentioned items are outside of the plant fence and the storage yard is outside the fence? A. The storage yard has nothing to do with the plant in my mind.

Q. In your mind this is part of the other Angle operations that leave their items at the storage yard? A. Yes.

Q. Where is the tank and pit and water well and those things located in relation to the storage yard? A. The two water wells, the fire pond and fire pump, and a blow-down tank that I failed to mention, are to the west of the perimeter fence, plant perimeter fence. The gasoline tank is to the east of the perimeter fence, and apart from the storage area, as heretoforementioned.

Q. Where is the storage area? A. The storage area is back to the north of the gasoline tank.

Q. Would you mind drawing a diagram and showing us where the fence is and other items you are discussing?

HEARING OFFICER: Excuse me, Mr. Martin, would it simplify matters if you say the various items that Mr. Rodgers has mentioned and storage yard are located in the same vicinity outside the same fence?

MR. MARTIN: Yes, I think it would.

88 HEARING OFFICER: Is that a true statement or not, Mr. Rodgers?

THE WITNESS: Excuse me, I don't hear you.

HEARING OFFICER: Let's say that the storage tank and fire pond and wells that you mentioned, they are all located within the same area right outside the plant fence?

THE WITNESS: They are not in the same area. Possibly the way I stated, I wanted to think that, but they are really not.

HEARING OFFICER: Go ahead.

THE WITNESS: If my directions are correct, we would have here (indicating). It is upside down. Here (indicating) is a perimeter fence of the plant. Here (indicating) is our two wells.

HEARING OFFICER: The wells are located, what direction?

THE WITNESS: Opposite direction from the storage yard. Then we have here (indicating) the storage tank, and this (indicating) is a road running by here.

Q. (By Mr. Martin) May I ask you, do you have an emergency shutdown valve outside that fence? A. No.

Q. Are you sure? A. Now you are talking about in the plant?

Q. For any part of this operation. A. There is a switch

89 out here (indicating) for the pump to this tank.

Q. What is the gas for, is that used in connection with the helium plant? A. It is an extraction from the natural gas.

Q. That is used by the helium operations, is that correct? A. Yes.

Q. You referred to small squares, you have a small square marked gas tank? A. This is a pump.

Q. That's a small triangle you made? A. This (indicating) is a pump.

Q. In order that this record will be legible and understandable when we are through, the gas tank is No. 1, is that correct? We will number this No. 1. A. All right.

Q. The emergency switch is No. 2? A. This is not an emergency switch. It is a simple on and off switch for a transfer of this traffic.

Q. No. 2 is an on-off switch relative to the product in item one? A. Yes.

Q. What is the small triangle? A. That is a pump.

Q. We will number that No. 3. All right, let's look at the west side of the yard.

90 HEARING OFFICER: The items you have numbered previously are on the east side, east side of the yard.

Q. (By Mr. Martin) On the west side of the yard I see a large square entitled fire pond. What is that? A. It is a reserve.

Q. Is that used in connection with the helium plant?

A. Yes, it is.

Q. With another fence around that. All right, I will draw a fence around that. No. 4, you have another mark here (indicating) that is almost a square. What is that? A. A pump.

Q. We will call that No. 5. What is its operation?

A. It gives us suction from this reserve.

Q. Which is No. 4 and higher pressure to fight a fire.

And you have marked two W's next to two circles next to the plant. A. These are water wells.

Q. Those are water wells? A. Yes.

Q. Where is the blow-down pit? A. Excuse me. I forgot one. This is a--

Q. (Interrupting) Mark it No. 6, please. Where is the blow-down tank? Mark it No. 7. Where is the pressure station, do you know where the pressure station is? A. O. K., I will show (indicating).

91 Q. Where is the pressure switch? A. You are talking about--I'd have to draw, it is too--

Q. (Interrupting) Watch your lines. It is north? A. Yes.

Q. All right. A. And it would be probably in this area (Indicating).

Q. Mark that No. 8, will you. Now, are there some more items out there you can think of offhand? A. We have a control valve.

Q. Where is it? A. Within this 8 (indicating), a control valve, PIC 100.

Q. Where do you get your helium? A. This is the induction of the plant from here (indicating), No. 8.

Q. Where does that come from? A. I have never seen from the field. I have seen from the road several locations, but--

Q. (Interrupting) There is a field of several wells immediately to the north of your plant? A. I am aware that there is to supply the plant, but I have never been there.

Q. Are you familiar with the gathering system, the miles of gathering system that brings the helium from the wells.

HEARING OFFICER: Excuse me. For the sake of time, I think all parties concerned are willing to concede several

92 things located outside of the plant proper. I believe we have enough there to show that.

MR. MARTIN: All right.

HEARING OFFICER: Thank you.

MR. MARTIN: That's all we are trying to show.

Q. (By Mr. Martin) Mr. Rodgers, you have not marked the storage area, which you have marked as Frontier Oil.
A. Yes.

Q. Would you put a number on that. A. What would you like on that?

Q. I think you are up to No. 9. A. 9.

Q. Are you sure you don't contain some of the storage items inside the plant fence? What about pipeline valves and meters in the maintenance building? A. If there are any there, I am not aware of it.

Q. All right. In other words, there could be a number of maintenance items you would not be aware of, is that correct?
A. It is possible, but not too likely. I usually keep up with that that's going on in the area. There is a possibility there are some recently.

Q. What are the men's names who work under you in your crew? A. At the present time it has been Russell Bishop and Corey Call.

93 Q. Corey Call and Russell Bishop? A. Yes.

Q. How long have they been working under you? A. Both of them are relatively new men and I would venture a guess, not remembering the dates, of something like two months. For Bishop it would probably be, possibly three months, and for Corey, he is just working a vacation, so it would probably be in the neighborhood of two weeks.

Q. What does Corey ordinarily do? A. He is designated as a janitor.

Q. He is just filling in on a vacation now? A. Yes.

Q. Who would work for you if you were not on vacation now?
A. In Corey Call's position would be John Harris.

Q. How long has Harris worked for you? A. The same time that I have been there. He's been there something over a year.

Q. He has been there quite some time? A. Yes.

Q. It is your responsibility, is it not, however you may think of it in your own mind, to direct and control the people who work for you, whether or not you think of it as management, you have the responsibility to direct and control the people, don't you?

A. Pertaining to the job on my shift, I have the direction with the

94 exception of major things, and on occasion have made decisions because of time or necessity.

Q. All right. You have an extremely valuable group of equipment under your control and you must make these decisions under certain circumstances, is that right? A. Yes.

Q. And if the facts warrant it, you have to take the action without the opportunity to check with higher authority, is that correct?

A. There has been occasions when we have had to do this.

Q. The people underneath you, you have the obligation and responsibility to direct them in what they do while you are there with them, is that not true? A. Yes.

MR. MARTIN: I have no further questions.

HEARING OFFICER: Do you attend any management meetings, Mr. Rodgers?

THE WITNESS: No.

HEARING OFFICER: Who gives you your orders, or don't you get orders when you come on the shift?

THE WITNESS: We have a special orders book, and for the most part they are written by Mr. Tyler.

HEARING OFFICER: In your orders that are given to you, do your orders also contain orders for the men who work under you?

95 THE WITNESS: Well, in the sense that it is a total operation, it would be for all of us, I suppose. I don't know. I don't quite see, we all read the special orders book. It is open to all.

HEARING OFFICER: Everyone reads the order book. Then do you designate what the two men working with you should do on the shift?

THE WITNESS: Well, these men perform their duties, as already specified. They know their duties and go about and perform them in a routine manner for the most part.

HEARING OFFICER: Well, your functions as far as directing their activities--

THE WITNESS (interrupting): Well--

HEARING OFFICER: Do you have to give them directions?

THE WITNESS: There are occasions when instructions are necessary, yes.

HEARING OFFICER: Could you give us a brief example?

THE WITNESS: If there was a decision to be made, should we or should we not shut down an engine, and it was--there was, it was an emergency, they would come to me and say should we go ahead and knock it off, and I would say yes, you should, or no, you shouldn't, to that extent, yes.

HEARING OFFICER: O. K.

I have no further questions

Do you have anything further?

REDIRECT EXAMINATION

96 Q. (By Mr. Patton) As an employee of Kansas Refined Helium, you do receive pay checks, do you not? A. Yes.

Q. Do those pay checks reflect the name of Kansas Refined Helium Company on the pay check? A. Yes, they do.

Q. Who prescribes the duties, who prescribes the duties of the junion operators? A. We have a blue book that outlines the primary duties to be performed on each shift.

Q. Who made up the blue book, the senior operator or some management employee? A. This was made up by Mr. Tyler.

Q. Do the employees of Kansas Refined Helium Company give assistance to employees of other companies that might be owned by Mr. Angle to your knowledge? A. Well, there was this pipe unloading. Is this what you have in mind?

Q. Yes. Normally do they do this? A. Normally do they do this?

Q. Yes. A. They are very easily numbered, there have been that few, that few of occasions where they would help other than in the plant because they have been needed exclusively in the plant.

97 Q. Do the employees of other companies owned by Mr. Angle give assistance to KRH? A. No.

MR. PATTON: No further questions.

HEARING OFFICER: Do you have any production quota or anything on this shift?

THE WITNESS: Not a production quota as such.

HEARING OFFICER: If production were low, would the plant manager speak directly to one of the men under you about it if it were their fault, or would he speak to you about making them get their production up?

THE WITNESS: Well, I think they would both be brought into play in that matter.

HEARING OFFICER: I have no further questions.

MR. MARTIN: In a moment I think I will, if I may have just a moment.

HEARING OFFICER: O. K.

Off the record.

(Discussion off the record.)

HEARING OFFICER: On the record.

RECROSS EXAMINATION

Q. (By Mr. Martin) Mr. Rodgers, why would you make a decision to shut down or, as I believe you called it, knock off an engine?

A. If the equipment was operating in a manner that would be
98 detrimental, I'd say too, that probably if it were in a very dangerous position, that the man in charge would never get as far as I to do something about it, and rightly he shouldn't if it were in great danger.

Q. So he looks to you to tell him what to do, whether to shut it down or not? A. If it is a marginal thing, his first step would be to ask me.

Q. You are the one to use the discretion; not him? A. Unless it would be a very dangerous situation.

Q. If it is marginal, you exercise your independent judgment? A. Yes.

Q. You tell him what to do in those cases? A. In those cases.

Q. Now as a practical matter you also tell him what to do a great deal of the time. You have people here whom you do have to direct, do you not, there is a reason for you being there?
A. Primarily my duty is to be a control room operator and along there is a responsibility being a senior man, as far as position is concerned, but the men know their positions and operate within those positions and know what to do.

Q. Then is it your correct feeling that you don't feel you are
99 a part of management, you actually work in the plant, you are working more time in the plant than supervising the plant? A. I definitely spend eight hours in the control room.

Q. Your time in supervising the men is not the majority of the time? A. Definitely not.

Q. But you do spend part of the time supervising them?
A. There would be some supervision.

MR. MARTIN: I have no further questions.

HEARING OFFICER: You are excused, Mr. Rodgers.

(Witness excused.)

HEARING OFFICER: I would like to pose a stipulation here.

May we stipulate that the employer has made gross sales of helium, residue, gas and oil and gas products in excess of $500,000 during the year 1966 and have sold products or furnished services in excess of $50,000 to customers who have offices located outside the State of Kansas.

Mr. Martin.

MR. MARTIN: I believe we can so stipulate, but prior to concluding, I have a couple more questions for the last witness before you close the record.

HEARING OFFICER: All right. You would stipulate to that.

MR. MARTIN: Would you read it again, sir?

HEARING OFFICER: Yes.

100 The employer has made gross sales of helium, residue, gas and all gas products in excess of $500,000 during the year 1966 and has sold products or furnished services in excess of $50,000 to customers who have offices outside the State of Kansas.

MR. MARTIN: Yes, we will so stipulate.

MR. PATTON: We will so stipulate.

HEARING OFFICER: The stipulation is received.

Looking at Employer's Exhibit No. 8, a list of employees, would we be able to exclude by stipulation Mr. Norman Klein, the general manager; Mr. W. E. Owens, the plant manager; Mr. Henry Tyler, plant engineer; and Mr. John Stiff, maintenance engineer, would we be able to exclude them from the unit as supervisors, is that your understanding?

MR. PATTON: Petitioner will so stipulate.

MR. MARTIN: We will stipulate with the understanding that that is not all of the supervisors in this or the other trade named operations.

HEARING OFFICER: O. K. Thank you.

(The document above referred to, heretofore marked Employer's Exhibit No. 8, was received in evidence.)

HEARING OFFICER: Is there anything else?

MR. MARTIN: There is, Mr. Holt. I have a couple of questions
101 of Mr. Rodgers. I have no objection to his answering from his present seat.

HEARING OFFICER: O. K.

You are still under oath.

Whereupon.

AREL L. RODGERS

was recalled as a witness by and on behalf of the Petitioner and, having been previously sworn, was examined and testified further as follows:

RECROSS EXAMINATION

Q. (By Mr. Martin) Mr. Rodgers, it is necessary, is it not, that you advise your subordinates there concerning switching the dryers? A. It is not only basis of time.

Q. But you tell them about switching the dryers and when to do it and so forth, don't you? A. This is what I am trying to explain. There are occasions that because of this broken through, we can say, we have to switch.

Q. When it is a routine thing, they do it on their own. When it is not a routine thing, you tell them when to do it?

A. I might add this, not trying to be facetious--

Q. (Interrupting) Is the first of this statement correct?

A. May I add this to it? Most of the men can see these switches when I do, and there are occasions when I have to say, John, switch
102 the absorber. But for the most part it is a routine matter.

Q. Routine, they do it; not routine, you do it? A. Yes.

Q. Is the same thing true on the absorber? A. Yes.

Q. When it is not routine you make the decision; when it is routine the subordinates do it on their own? A. Yes.

MR. MARTIN: No further questions.

MR. PATTON: I have one further question.

HEARING OFFICER: O. K., sir.

REDIRECT EXAMINATION

Q. (By Mr. Patton) These decisions you make is as senior operator in the plant? A. Yes.

MR. PATTON: No further questions.

HEARING OFFICER: O. K. Thank you.

MR. MARTIN: We have no further questions, Mr. Holt.

HEARING OFFICER: All right.

(Witness excused.)

HEARING OFFICER: Will briefs be filed?

MR. MARTIN: We will want to file a brief, yes.

MR. PATTON: Petitioner will want to file a brief, reserve the right to file a brief.

MR. MARTIN: In that regard, Mr. Holt, may we have an
103 extra copy of the statement you said was available?

HEARING OFFICER: Yes. Is that it (indicating)?

MR. MARTIN: It seems to be.

HEARING OFFICER: Copies of the exhibits to be furnished, Mr. Patton, should be furnished to the Board and to the employer not later than August 12, am I correct? Is that Friday?

MR. CHURCHILL: Yes.

HEARING OFFICER: If there is nothing further--

MR. MARTIN (interrupting): Mr. Holt, we do ask for an extension of time for the filing of briefs in the case. As you know, you have power under your rules to make an extension of time and

we would ask for additional time for filing briefs. I think this is going to be a complex brief. I don't know what date the transcript would be with us.

THE REPORTER: It is Tuesday. You will receive them Friday.

MR. MARTIN: I don't think this would give us sufficient time to make a brief and get it back, and we would ask for at least an additional week. We have another extensive case before the Board beginning Thursday of this week. It is a strike issue for 10 or 11 weeks, and it involves about 50 people who have been on strike for this period of time, and the Board ruled there would be an election, but it will take considerable amount of work and we would like to have
104 an additional week to get this brief in.

HEARING OFFICER: In consideration of what the employer's counsel has requested, briefs should be due on Friday, the 19th. Briefs will be due on Friday, August 19.

MR. PATTON: Is that received or postmarked by that date?

HEARING OFFICER: Received by that date.

MR. MARTIN: You will be closed, will you not, on Saturday and Sunday?

HEARING OFFICER: We will.

MR. MARTIN: Is there any reason to make it Monday then? You may not be working over the weekend, but we may be. We ask that it be made Monday instead of Friday.

HEARING OFFICER: Firday, August 19.

If there is nothing further, the hearing will be closed.

(Whereupon, at 4:20 o'clock, p.m., the hearing in the above-entitled matter was closed.)

NAME

Harold L Foos

ADDRESS 642 Margaret St. - Russell, Ky.

S. S. NO. 521-32-1502

DEPT. RIDER KBR NO. OF DEPTS. 4-M

	DATE	RATE
	2.50	2.60
	2-6	2.40

FIXED EARNINGS

FIXED DEDUCTIONS 12.61

NAME	RATE	PERIOD ENDING	REGULAR HOURS	O.T. HRS.	EARNINGS REGULAR	EARNINGS OVERTIME	EARNINGS OTHER	GROSS	DEDUCTIONS W.H. TAX	DEDUCTIONS F.I.C.A.	DEDUCTIONS GROUP INS.	DEDUCTIONS STATE TAX	TOTAL DEDUCTS	NET PAY	CHECK NO.	CUMULATIVE EARNINGS
FORWARD																
HAROLD L. FOOS	2.60	1-8	80	24	208.00	93.60		301.60	29.00	12.69	12.61	4.35	58.63	242.97	65327	301 60
HAROLD L. FOOS	2.60	1-22	80	32	208.00	124.80		332.80	31.80	13.98		4.65	50.43	282.37	65385	634 40
HAROLD L. FOOS	2.60	2-5	80	32	208.00	124.80		332.80	31.80	13.98	12.61	4.65	63.04	269.76	65458	967 20
HAROLD L. FOOS	2.70	2-19	80	28	216.00	113.40		329.40	31.80	13.83		4.65	50.28	279.12	65513	1296 60
HAROLD L. FOOS	2.70	3-5	80	28	216.00	113.40		329.40	31.80	13.83	12.61	4.65	62.89	266.51	65581	1626 00
HAROLD L. FOOS	2.70	3-19	80	32	216.00	129.60		345.60	34.60	14.52		5.25	54.37	291.23	65643	1971 60
					1292.00	699.60		1991.60	190.80	82.81	37.83	28.20	339.64	1651.96		
HAROLD L. FOOS	2.70	4-2	80	40	216.00	162.00		378.00	37.40	15.88	12.61	5.55	71.44	306.56	65712	2349 60
HAROLD L. FOOS	2.70	4-16	64		172.80			172.80	10.00	7.26		1.40	18.66	154.14	65776	2522 40
HAROLD L. FOOS	2.70	4-30	80	40	216.00	162.00		378.00	39.70	15.88	12.61	5.85	74.04	303.96	65840	2900 40
HAROLD L. FOOS	2.50	5-8	40	3½	100.00	13.13		113.13		4.75			4.75	108.38	474	3013 53
HAROLD L. FOOS	2.50	5-22	80	15½	200.00	58.13		258.13	20.60	10.84		3.15	34.59	223.54	499	3271 66
HAROLD L. FOOS	2.50	6-5	8 Holiday 80		220.00			220.00	16.10	9.24	12.51	2.55	40.40	179.60	524	3491 66
HAROLD L. FOOS	2.50	6-19	80	3½	200.00	13.13	S.D. .80	213.93	14.60	8.99		2.25	25.84	188.09	550	3705 59
					1324.80	408.39	.80	1733.99	138.40	72.84	37.73	20.75	269.72	1464.27	TOTAL	
					2596.80	1107.99	.80	3705.59	329.20	155.65	75.56	48.95	609.36	3096.23	YEAR TO DATE	3705.59

DATE EMPLOYED

DATE TERMINATED

REASON FOR TERMINATION

HOME

PHONE

PERSON TO NOTIFY IN EMERGENCY

Form M533 PRINTED IN U.S.A.

COMPENSATION RECORD

GENERAL COUNSEL'S EXHIBIT NO. 19

NATIONAL LABOR RELATIONS BOARD

420

Line

Harold L Foos

ADDRESS 642 Margaret Dr. - Russell, Ky.

S.S. NO. 521-32-1002

DEPT. KRN DEPENDENTS 4-M

NAME	RATE	PERIOD ENDING	REGULAR HOURS	O.T. HRS.	EARNINGS REGULAR	EARNINGS OVERTIME	EARNINGS OTHER	GROSS	W.H. TAX	F.I.C.A.	DEDUCTIONS GROUP INS.	DEDUCTIONS STATE TAX			TOTAL DEDUCTED	NET PAY	CHECK NO.	CUMULATIVE EARNINGS
FORWARD										155.65								3705.59
HAROLD L. FOOS	2.50	7-2	80	6	200.00	22.50	S.D. 8.60	231.10	17.60	9.71	12.51	2.55			42.37	188.73	0518	3937.69
HAROLD L. FOOS	2.50	7-17	80	16	200.00	60.00	S.D. 3.20	283.20	25.20	11.89		3.75			40.84	242.36	0608	4219.89
HAROLD L. FOOS	2.50	7-31	80		200.00		S.D. 8.00	208.00	13.10	8.74	12.51	1.95			36.30	171.70	0623	4427.89
HAROLD L. FOOS	2.50	8-5	112		280.00		VACATION PAY	280.00	25.20	11.96		3.75			40.91	239.29	0646	4707.89
																TOTAL		
																YEAR TO DATE		

DATE EMPLOYED

DATE TERMINATED

REASON FOR TERMINATION

DEPT.

PHONE

PERSON TO NOTIFY IN EMERGENCY

FORD MOTOR COMPANY Form N533 PRINTED IN U.S.A.

COMPENSATION RECORD

421

	Age	M. Status	No Child	Prior Co	Kind Work	
Cecil, Cecil	23	m	1	Marlette Coach	Assembly	135 hr mo
James D Jones	35	m	4	Beech Aircraft	Machinist	250 hr
Thad Jones	36	m	3	Red Tiger Drill	Driller	270 hr
Dwayne Johnson	38	m	2	Great North Oil Co.	Instr. mech.	331 hr
Merle Smith	36	m	4	Cooperative Tim Chem Co	Laborer	259 hr
Lou Weinman	26	S	—	Beech Aircraft	Sheetmetal	213
Russell Bishop	24	S	—	General Electric	Cryogenic Technician	310 hr 300 mo
T. Barrett	28	m	2	Garrett Oil Co.	Station Mgr.	#95
D. Tittel	39	M	2	American Messer	Electrician	

NATIONAL LABOR RELATIONS BOARD

Docket No. 17-RC-5121 OFFICIAL EXHIBIT NO. Employer 21

Disposition: Identified ✓ Received ✓ Rejected

In the matter of Kansas Refining & Helium Co.

Date 9/19/66 Witness Klein Reporter PS

No. Pages 1

KANSAS REFINED HELIUM COMPANY

EMPLOYEE'S WORK RECORD

POSITION B- Operator WEEK ENDING 7/3/66 1966

DAY	TIME START	LUNCH FROM	LUNCH TO	TIME STOP	REG. HOURS	O.T. HOURS	REMARKS
MON.	0800			1600	8		
TUES.	0800			1600	8		
WED.	0800			1900	8	3 *	
THURS.	0800			1600	8		
FRI.		OFF					
SAT.	2400			0800	8		
SUN.	2400			0800		8	
				TOTAL HOURS	40	11	

John L. Harris
EMPLOYEE'S SIGNATURE

E.L.B.
APPROVED

* ONE OF THESE HRS. WAS WORKED LAST WEEK

NATIONAL LABOR RELATIONS BOARD

Docket No. 17-RC-5281 OFFICIAL EXHIBIT NO. Employer 3

Disposition: Identified ✓ Received ✓ Rejected

In the matter of Kansas Refined Helium Co.

Date 8/5/66 Witness Tyler Reporter PS

No. Pages 1

~~424~~ 421

KANSAS REFINED HELIUM COMPANY

EMPLOYEE'S WORK RECORD

POSITION Operation WEEK ENDING 6-30 1966

DAY	TIME START	LUNCH FROM	LUNCH TO	TIME STOP	REG. HOURS	O.T. HOURS	REMARKS
MON.	2400	-	-	0800	8		Oper.
TUES.	2400	-	-	0800	8		
WED.	2400	-	-	0800	8		
THURS.	2400	-	-	0800	8		
FRI.	2400	-	-	0800	8		
SAT.							
SUN.							
			TOTAL HOURS		40		

Harold L. Snow
EMPLOYEE'S SIGNATURE

J. W. Young Jr.
APPROVED

NATIONAL LABOR RELATIONS BOARD

Docket No. 17RC-5126 OFFICIAL EXHIBIT NO. Employer 4

Disposition: Identified ✓ Received ✓ Rejected

In the matter of Kansas Refined Helium Co.

Date 9/15/66 Witness Tyler Reporter DS

No. Pages

1 Ex.

425

KANSAS REFINING & HELIUM COMPANY

EMPLOYEE'S WORK RECORD

POSITION Jr. Opers WEEK ENDING June 26 1966

DAY	TIME START	LUNCH FROM	LUNCH TO	TIME STOP	REG. HOURS	O.T. HOURS	REMARKS
MON.	0800	—	—	1600	8		operations
TUES.	0800	—	—	1600	8		"
WED.	0800	—	—	2100	8		"
THURS.	0800	—	—	1600	8	5	" (Hi-gun Fire Shut Down & Start Up)
FRI.							OFF
8 SAT.	2400	—	—	0800	8		operations
8 SUN.	2400	—	—	0800		8	"
			TOTAL HOURS		40	13	

Jesse Smith
EMPLOYEE'S SIGNATURE

Louis Henry Tyler
APPROVED

NATIONAL LABOR RELATIONS BOARD

Docket No. 17-RC-5221 OFFICIAL EXHIBIT NO. Employer 5

Disposition: Identified ✓ Received ✓ Rejected

In the matter of Kansas Refining & Helium Co.

Date 7/6/66 Witness Tyler Reporter PS

No. Pages 1

KANSAS REFINED HELIUM COMPANY

EMPLOYEE'S WORK RECORD

POSITION Ir Operator WEEK ENDING 6-26 1966

DAY	TIME START	LUNCH FROM	LUNCH TO	TIME STOP	REG. HOURS	O.T. HOURS	REMARKS
MON.							
TUES.							
WED.	1600			2400	8		
THURS.	1600			2400	8		
FRI.	1600			2400	8		
SAT.	1600			2400	8		
SUN.	1600			2400	8		
			TOTAL HOURS		40		

J D Fowe
EMPLOYEE'S SIGNATURE

A.R. Tinsley Tyler
APPROVED

NATIONAL LABOR RELATIONS BOARD

Docket No. 17-RC-5126 OFFICIAL EXHIBIT NO. Employer 6

Disposition: Identified ✓ Received ✓ Rejected

In the matter of Kansas Refined Helium Co.

Date 5-2-66 Witness Tyler Reporter PS

No. Pages 1

17E6

SUPERVISORS OF GEORGE A. ANGLE D/B/A THE FOLLOWING:

RED TIGER DRILLING COMPANY

Roy McClure - Salary
Thomas J. Buffington - Salary
Sylvester Fickel - Salary
Fred Damme - Salary
Harold Little - Hourly
Harold Warner - Hourly
Walter Oden, Jr. - Hourly
W. C. Ogle - Hourly
R. E. Burkhart - Hourly
Ross Crawford, Jr. - Hourly

KANSAS REFINED HELIUM COMPANY

William E. Owens - Salary
Henry W. Tyler - Salary
John R. Stiff - Salary
Harry L. Harms - Hourly
Jimmie F. Ham - Hourly
Russell M. Sims - Hourly
Arel L. Rodgers - Hourly

PIPELINE

Al Pesicka - Salary

GREAT PLAINS DRILLING COMPANY

Elmer E. Snyder - Hourly

RED TIGER TRUCK, CAT & GRADER COMPANY

Claude Branch - Salary

HAYS TANK SERVICE

Clayton J. Engel - Hourly

FRONTIER OIL COMPANY

Maxine V. Starr - Salary
Norman E. Klein - Salary
Roy R. Krueger - Salary
Richard D. Parker - Salary
Rex Martin - Salary

		- COMPTROLLER		
	NORMAN KLEIN	- GEN. MGR.		
1	W. E. OWENS	- PLANT MGR.		
2	HENRY TYLER	- PLANT ENG.		
3	JOHN R. STIFF	- MAINT. ENG.		
✓ 4	RUSSELL M. SIMS	- SENIOR OPERATOR		
✓ 5	HARRY HARMS		✓	✓
6	AREL ROGERS		✓	✓
✓ 7	JIMMIE HAM		✓	✓
✓ 8	LEON MYERS	- PLANT CLERK		
✓ 9	DUAYNE JOHNSON	- INST. MAN		
✓ 10	THOMAS LYNCH	- [redacted]	MAINT.	OPER.
✓ 11	JACK DURBIN		✓	✓
✓ 12	GERALD JULIAN		✓	✓
✓ 13	W. L. ROBERTS		✓	✓
✓ 14	WILLIAM PICKERILL		ASSIST.	OPERATOR
✓ 15	MERLE SMITH		✓	✓
✓ 16	RONALD WEINMAN		✓	✓
✓ 17	JOHN WAKULICH		✓	✓
18	JOHN HARRIS		✓	✓
✓ 19	THOMAS B. GARRETT		✓	✓
✓ 20	[redacted] COREY T. CALL	-	CUSTODIAN & ASST. OP.	
✓ 21	DEAN TITTLE	-	ELECTRICIAN	
✓ 22	JAMES D. FOOSE		ASSIST.	OPERATOR
✓ 23	HAROLD L. FOOS		✓	✓
24	JOSEPH RIEDL	-	LABORER & MAINT	OP.
25	CHARLES MYERS		✓	✓
26	RUSSELL BISHOP		ASSIST.	OPERATOR

NATIONAL LABOR RELATIONS BOARD

Docket No. 17-RC-5126 OFFICIAL EXHIBIT NO. Employer 8

Disposition { Identified ✓ / Received ✓ / Rejected }

In the matter of Kimberly-Clark Corporation

Date 7/9/56 Witness Taylor Reporter CS

No. Pages 1

GENERAL COUNSEL'S EXHIBIT NO. 20

WORK SCHEDULE

Days Spent Performing Work
at Kansas Refined Helium Plant
Since Jan. 1966 While On Payroll
of Great Plains Drilling Company

	ALTHA YOUNG	LEO BAUM	ELMER SNYDER
Jan. 1966	0		0
Feb.	0		0
Mar.	0		0
April	0		0
May	0		0
June	June 9, (?)		June 9, (?)
July	0		0
Aug.	0		0
Sept	Sept 22, 23 and 24 (3 days)	Began Working For Great Plains Sept 17	Sept 22, 23 and 24 (3 days)
Oct.		0	0
Nov.		6	6
Dec.		10	11
Jan 1967		14	6
Feb.		5	3
Mar.		0	0
April		0	0
May		3	0
June		June 30 (1 day) (6 of the 21 days was at Johnson)	June 21, 22, 23 (3 days)
July		21 (records sent with Aug. 5)	13 records sent with Aug 3.
August		5	3

NATIONAL LABOR RELATIONS BOARD
17-CA-3021 et al
Great Plains Drilling Co.
GC-22
OFFICIAL EXHIBIT No.
Identified
Received
Rejected
Deposition
In the matter of Leo Baum
Date 8/10/67
Witness
Reporter

GENERAL COUNSEL'S EXHIBIT NO. 24-A

ORDER REOPENING RECORD AND REMANDING CASE TO TRIAL EXAMINER

On September 12, 1967, Trial Examiner Sidney D. Goldberg issued a "Preliminary Decision" finding that Respondent had violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. On October 20, 1967, Respondent filed timely exceptions to the Preliminary Decision alleging inter alia that the Trial Examiner erred in denying its motion to reopen the record on the ground of newly discovered evidence. In its motion before the Trial Examiner, and now in its exceptions and brief to the National Labor Relations Board, the Respondent alleges that Thomas B. Garrett, an employee of Respondent, who had not testified in the hearing before the Trial Examiner, but who was found by the Trial Examiner to have been unlawfully discharged admitted in a deposition to Respondent that certain testimony given by him before the District Court in a 10(j) injunction proceeding was not true and that the giving of such false testimony had been prompted by one Russell Sims, whose testimony, as an employee of Respondent, had also been presented to the Court in support of such injunction. Respondent further alleges that elements of Garrett's deposition are in direct conflict with Sims' testimony before the Trial Examiner on certain substantial and material issues in the case and has an important bearing on these issues. The Respondent, therefore, asks the Board that the Trial Examiner's denial of its motion to reopen the record be reversed and that the Board reopen the record and remand the case to the Trial Examiner for the purpose of taking Garrett's testimony. The General Counsel opposed Respondent's motion before the Trial Examiner but has filed no brief with the Board, nor has the Charging Party filed a brief with the Board.

The Board having duly considered the Respondent's exceptions and brief, and the entire record in the case, is of the opinion that Respondent's exceptions to the Trial Examiner's denial of its motion to reopen and remand has merit. Accordingly,

IT IS HEREBY ORDERED that the record herein be reopened and the case remanded to the Trial Examiner for the purpose of taking Garrett's testimony, as it bears on the substantive issues and issues of credibility in the case, and such other evidence as may be offered by the General Counsel and Charging Party in rebuttal thereof.

IT IS FURTHER ORDERED that upon the conclusion of the reopened hearing, the Trial Examiner shall prepare and serve upon the parties a Supplemental Preliminary Decision containing findings of fact upon the evidence received, conclusions of law, and recommendations, and that following the service of such Supplemental Preliminary Decision upon the parties, the procisions of Section 102.46 of the Board Rules and Regulations shall be applicable.

Dated, Washington, D. C., January 30, 1968

By direction of the Board:

Ogden W. Fields
Executive Secretary

VOLUME II

Nos. 23,295 23,300 23,750 23,751

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 23,295, 23,300

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

GEORGE A. ANGLE, D/B/A KANSAS REFINED HELIUM COMPANY,

Intervenor.

Nos. 23,750, 23,751

GEORGE A. ANGLE, D/B/A KANSAS REFINED HELIUM COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petitions for Review and Cross-Application for Enforcement of Orders of The National Labor Relations Board

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 1 3 1970

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CLERK

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RESPONDENT'S EXHIBIT NO. 1

R-1

PRINTED IN U.S.A. FORM 6

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION
MEMBERSHIP APPLICATION

LOCAL NO. _____ DATE _____

NAME _____
PLEASE PRINT

ADDRESS _____ CITY _____

COMPANY _____ CLOCK NO. _____

DEPARTMENT _____ CLASSIFICATION _____

AMOUNT OF FEE $ _____ _____
INIT • REIN • RE-SERVICE

I hereby accept membership in and designate and authorize the Oil, Chemical and Atomic Workers International Union, as my collective bargaining agent in all matters pertaining to wages, rates of pay and conditions of work.

_____ _____
WITNESS MEMBER'S SIGNATURE

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION
MEMBERSHIP RECEIPT

LOCAL NO. _____ DATE _____

OC AW

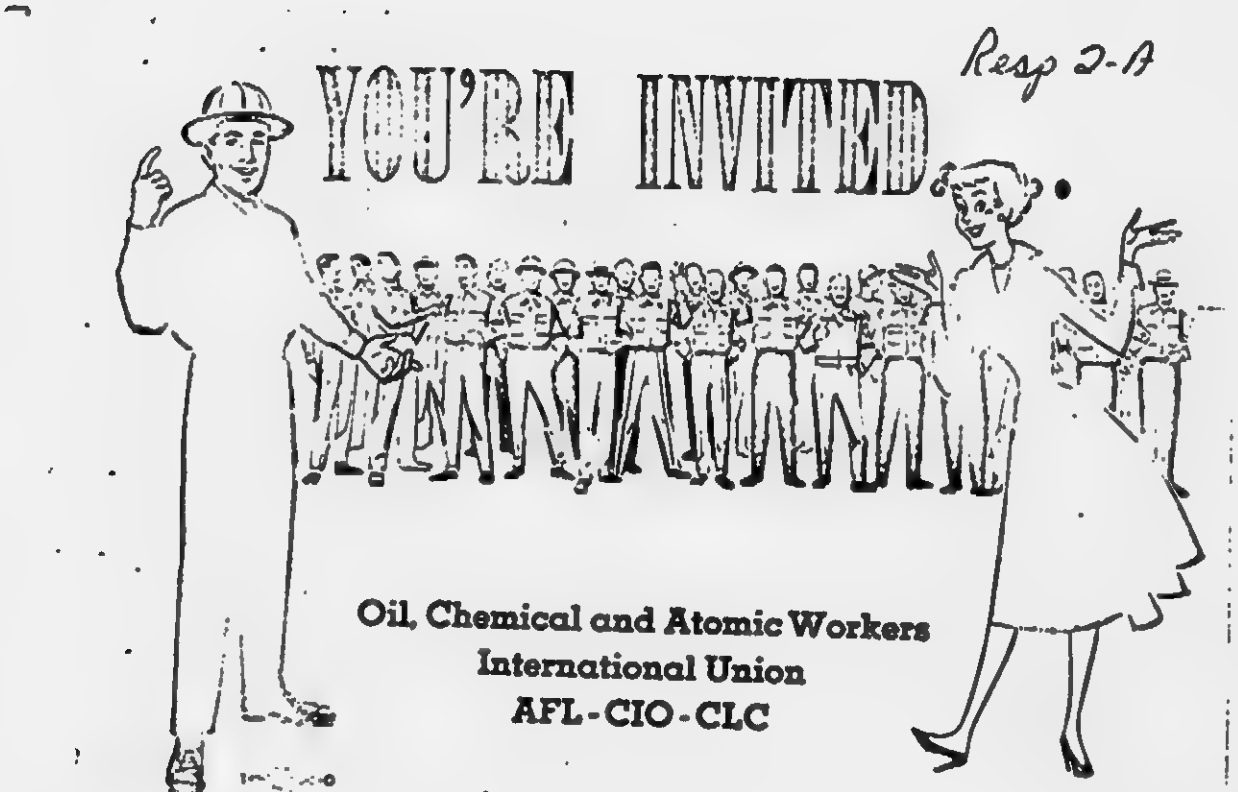
NAME _____

$ _____ _____
INITIATION FEE RECEIVED BY

NATIONAL LABOR RELATIONS BOARD
Case No. 17-CA-3021; 17-CA-3021-2
Resp. OFFICIAL EXHIBIT NO. 1
Disposition: Identified ✓ Received ✓ Rejected
In the matter of Kaiser Refineries Company
Date 7/18/62 Witness Patton Reporter Barr
Page 1

RESPONDENT'S EXHIBIT NO. 2-A

Resp 2-A



DC-5 EXH. 1

YES, YOU ARE INVITED. . .

to improve your future, to make your job a better one on which to work, to increase your standard of living. You are invited to help your fellow worker--perhaps your neighbor--win these same goals.

And you will do this, insure this better life, through your own local union of the Oil, Chemical & Atomic Workers International Union.

Working people have no ready-made quarrel with employers. Hundreds of OCAW locals and their members work harmoniously with their companies year after year, steadily advancing the living standards of the workers, without ever a sign of a fight.

But factory owners, employers, companies are in business to make profits. Whenever wages are raised, pensions established, vacations granted or increased or other benefits allowed, then profits may be reduced. So it is easy to see how employers are reluctant to do these things voluntarily.

Your boss may be the finest guy in the world, but he is human. He makes mistakes. The worker who deserves it may not get the better job. The employee who is not guilty may get fired.

Therefore, a union is needed to provide an orderly way to see that just treatment is given to all.

THE UNION FOR YOU

OCAW is the largest and strongest union in its field. It is made up of some 200,000 employees of petroleum, chemical, petro-chemical, atomic energy and related industries. Some 575 locals in over 40 states. Puerto Rico and seven Canadian provinces are affiliated with OCAW. Some 1,600 contracts are in force with 700 employees.

With a staff of 9 district directors, 12 department heads and assistants, and 120 skilled international representatives, OCAW can provide the information and service needed to help local union win

better contracts, settle tough grievances and deal effectively with some of the biggest corporations in America.

The officers of OCAW—who are democratically elected every two years--are working men who know the problems and desires of working people. For example, President A. F. Grospiron was employed at the American Oil Co. plant at Texas City, Texas.

You and your fellow members run your own local union in OCAW. It is the job of the International to bind us all together for strength, to pursue orderly programs for the benefit of all, and to provide experienced help for you.

For instance, dues are set by the local except that they may not be less than $3 a month. Should your local need higher dues for the proper operation of your local union, this is permissible. However, these higher dues can only be set by majority vote of the members affected through a secret-ballot election. Each local pays $2. 55 per member per month to the International Union to finance the operations of OCAW, and this is the only payment required or due the International Union.

The International is barred by the OCAW constitution from levying any assessment.

Nearly 600 local unions, working together, have won living standards for 200, 000 members of OCAW that were undreamed of a few short years ago.

HOW DO YOU ORGANIZE?

The laws of the United States not only say it is legal for you to organize a union. They also say it is a national policy to encourage labor organization.

The law further says your employer must not interfere with any efforts you make to form a union.

A department of the United States Government, the National Labor Relations Board, is charged with the duty of seeing to it that you are not interfered with in exercising your rights under the law.

If you want to organize your union, you contact the nearest OCAW district office or an OCAW representative to help you. You form a committee made up of workers from all shifts and all departments of the plant to develop ideas and plans for bringing about successful organization.

Finding sufficient interest--and you nearly always do--you get "authorization cards" like the one in the back of this book from your OCAW representative, and you get your fellow workers to sign them.

These cards are necessary. First, they show your OCAW representative the progress of your organizing campaign. Second, they are proof to the NLRB that there is sufficient union interest to warrant the holding of an election.

These cards are confidential. They are seen only by your OCAW representative and by an agent of the NLRB. They are never seen by your employer.

When a sufficient number of cards has been signed, the NLRB will be asked to hold an election. It will be a secret-ballot vote, conducted in the plant by the agent of the Federal Government.

If more than half the people balloting vote for OCAW then you have adopted this union as your official collective bargaining agency.

You and your fellow workers then set up your local union structure within the OCAW.

WHAT'S IN IT FOR YOU?

Occasionally a prospective OCAW member asks: "What's in it for me?"

Union contracts have made all industries--including those not organized--better places to work. Wages are better than they used to be and they continue to improve. There is pay for overtime--day as well as week. There are paid holidays and longer vacations with pay. There is severance pay in case of layoffs.

Pensions for industrial workers didn't just "happen." They were practically unheard of only a few short years ago. They were won by the workers themselves, organized and working together through their unions.

The "grievance procedure" is a mighty important part of any union contract. Any employee can sometimes get a bum deal on the job, either through an honest mistake or because some foreman or other boss doesn't like him. The grievance procedure in the contract provides the means to assure you that such an action will be corrected. This is real protection for the union member.

On the other hand, the "seniority system" in the contract provides the guarantee that the employee who deserves it will get the promotion or the better job that becomes open.

SECURITY

Thru His OCAW Union

FOR A BETTER FUTURE

The Oil, Chemical and Atomic Workers International Union stands for progress in every field. This includes the field of so-called "automation" where more and more machines are taking over the work of human beings.

This is as it should be. Drudgery should be lifted from the shoulders of people as rapidly as possible.

But there is a change over period, a period which if unguarded will leave jobless and suffering people displaced by machines. This is a job for your union.

OCAW is working with the employers of many thousands of people developing ways of avoiding joblessness and suffering as machines are used more extensively.

There are many answers: Sometimes it is shorter hours; sometimes it means transfers to other plants; development of new

products and expansion of the industry; earlier retirement with higher pensions. If all else fails there is the negotiation of severance pay sufficient to carry a worker over until he finds a new job.

A solution can be found when a reasonable union committee discusses the problem sincerely with a reasonable employer.

This is a big job, an important job. But it is not the only one a union can perform to see that a loyal and competent worker is not unjustly discharged.

Local unions, with the aid of the International Union also see to it that plants are safe places to work, that workers have adequate life and health insurance and all the other securities to which they are entitled.

These are jobs which a single employee cannot do alone.

WE'RE ALL FIRST-CLASS CITIZENS

Gone are the days when industrial workers were looked down on as "factory hands," socially inferior to the "better" elements of the community.

Thanks to the growth, progress and stability of unions, the wages of manufacturing employees have made them the economic equals (sometimes higher) of white-collar workers, shopkeepers and semi-professional people. It is not uncommon today for a plant machine operator, a school principal and a lawyer to swap barbecue recipes over a common backyard fence.

Union-won wages, or wages set on the union pattern, give the worker his proper status in his community. He can contribute his share to his church and the Community Fund. He has a comfortable home. His children are dressed as well as the others in school. He is a welcome customer at the stores and automobile agencies.

The industrial worker of today can have peace of mind--thanks to union-won benefits. He can take his family to mountains or sea-shore on paid vacations of from two to five or six weeks, unheard of in industry a few years ago.

He has company-paid life, health and accident insurance in case of emergency. If his plant is organized and he does his work efficiently he can depend on his union to protect all these benefits for him, protect him against unjust discharge.

And thanks to union-won pensions, he looks forward to spending the twilight years of his life in comfort, no burden to either his family or his community.

FOR FAIR TREATMENT

Unions are formed and union contracts are negotiated for one general purpose: To assure fair treatment for all.

Perhaps a worker doesn't get the pay raise his job calls for. Or maybe he doesn't get some overtime pay to which he is entitled. Or he is disciplined for an offense he did not commit. Or he doesn't get a promotion to which he is entitled.

Any of these is a just case for a complaint. It is called a grievance. A grievance is a violation of the contract, working rules or customs in a plant which results in an individual or group of individuals not being treated fairly.

The worker reports any such case to his shop steward or local grievance committee. The union takes the grievance and talks it over with management. In many cases, such discussion between reasonable people results in a satisfactory settlement. If the union has a good case, wise management will admit something went haywire and correct it.

But if the company refuses to make a proper correction, the case can be arbitrated before an impartial judge. In nearly all OCAW contracts, such arbitration is required on request of either the company or the union.

Your boss may be a fine, fair and just man. But he is human and subject to human errors. A good union, a strong contract and arbitration provisions assure fair treatment for all.

EVERYBODY KNOWS THE RULES

A union contract is an agreement between the employer and the employees.

It sets the wages that will be paid for each job. It lists the holidays and the terms of vacations. It guarantees such things as insurance and pensions. It sets up a system of seniority and provides an orderly plan for the settlement of complaints, or grievances.

The contract also provides for such things as sick leave, jury duty, funeral leave, military service, hours of work, overtime, safety regulations and all the other conditions of employment and the benefits you shall receive.

Union contracts are alike in principle, but they vary from plant to plant to suit both local conditions and the desires of the employees.

So one of the first things you and your fellow OCAW members will do after your local is set up will be to call a meeting to start work on your contract. You will elect a contract negotiating committee.

You and your fellow members then will be free to make requests and suggestions as to what you want in your contract. With the help of an experienced OCAW international representative, your negotiating committee will then put these requests into a written "contract proposal." Another membership meeting must approve this proposal before it is submitted to management.

The committee, again with the help of the OCAW representative, will then go into negotiations with officials of the company. The company probably will have proposals of its own. Your committee will argue, and debate with the company representatives until they have won what they think is the best deal they can get.

The committee may come back to you, the membership, for advice one or more times during negotiations. And they must come to you before final approval. No contract can be signed until it has been voted on and approved by the membership.

YOUR UNION IS YOU

Your local union is YOU and your fellow members. No one can give you a union. Neither can anyone take it away from you. It is yours to run for the benefit of the membership.

You work, of course, within the framework of an international constitution. But this is in nowise an "outside" organization. The constitution was drawn up and is amended at international conventions--every two years--by local union delegates just like yourself. OCAW staff members and officers have no vote at conventions.

In your own local YOU:

- Adopt your own by-laws.
- Elect your own officers.
- Elect your own contract negotiating committee, grievance committee and shop stewards.
- Prepare and approve (or reject) any contract negotiated with the company for which you work.

The International Union provides you with all the "tools" you need: Publicity department, legal counsel, research, education and many other services. Trained and experienced representatives are at your call to help you with any problem.

Whether you use these services is up to you. Some locals use them all and use them frequently. Others are more self-sufficient and rarely call on the International. This is simply a matter of choice.

Nobody likes strikes. Occasionally they are necessary. But in OCAW nobody can CALL you out on strike. In order to strike, the group affected must vote for it. To guard against hasty or inadvisable strike action, the strike must be voted by a margin of at least 75 per cent.

Your local is yours to run as you and your fellow members see fit. It is also your opportunity to serve your fellow man.

YOU AND YOUR NEIGHBORS

A good local union is an asset to any community. Good union members are good citizens.

To be a good union member, a successful union member, one must have concern for his fellow man as well as for himself. It is the members who most want to make their plants better places in which to work, their communities, their country and the world better places in which to live who rise to positions of leadership in their unions.

Union members are organized to serve. That is why they are naturally good citizens.

The local should rank second to no other organization in the community, except perhaps the church. And it should walk hand-in-hand with the church. It should give full support to any worthwhile public, charitable or civic undertaking.

OCAW locals have good records of cooperation in such worthy causes as Boy Scout fund drives, March of Dimes, the Community Fund, civic improvement projects and youth recreational activities.

Union halls are often the scene of civic club or Scout meetings, charity bazaars and even art exhibits. They sometimes serve as temporary churches.

Good locals urge their members to hold public office and otherwise participate in civic affairs. It is good citizenship to see that working people are represented in the councils of government.

No organization or institution has more at stake than the local union in building a good community, for each member is vitally affected by the community in which he lives and rears his children.

And all OCAW contracts with employers must provide that there shall be no discrimination on the job against any employee because of race, sex, creed, color or national origin.

TO A BETTER TOMORROW

The work of OCAW will never be completed.

We are barely entering the age of automation. Automatic machines and new processes will constantly deliver more and more goods with less and less human effort.

Protections for working people, therefore, must be established and improved so that progress will benefit all rather than enrich a few at the expense of many.

Wages will have to be raised in order that people can buy the products of the machines.

Eventually the working time of individuals will have to be reduced in order that there will be jobs for all. This may be done by a shorter work week, longer vacations, earlier retirement with adequate pensions, longer periods of education for youth or combinations of these things.

Certainly prime goals are that our living standards must be constantly improved and working conditions bettered.

Higher standards of life, hospitalization and medical insurance and pensions must be achieved; greater job security must be guaranteed.

These then are our goals for the foreseeable future. Others will be met when they arise.

> "Every man must finally see the necessity of protecting the rights of others as the most effectual security of his own."
>
> --Thomas Paine

THE LAW OF THE UNITED STATES PROVIDES THAT:

Workers have the right to designate a union to represent them for the purpose of collective bargaining with their employer.

THE OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO
-AUTHORIZATION-

Name _____ Phone No. _____
PLEASE PRINT

Address _____ City _____

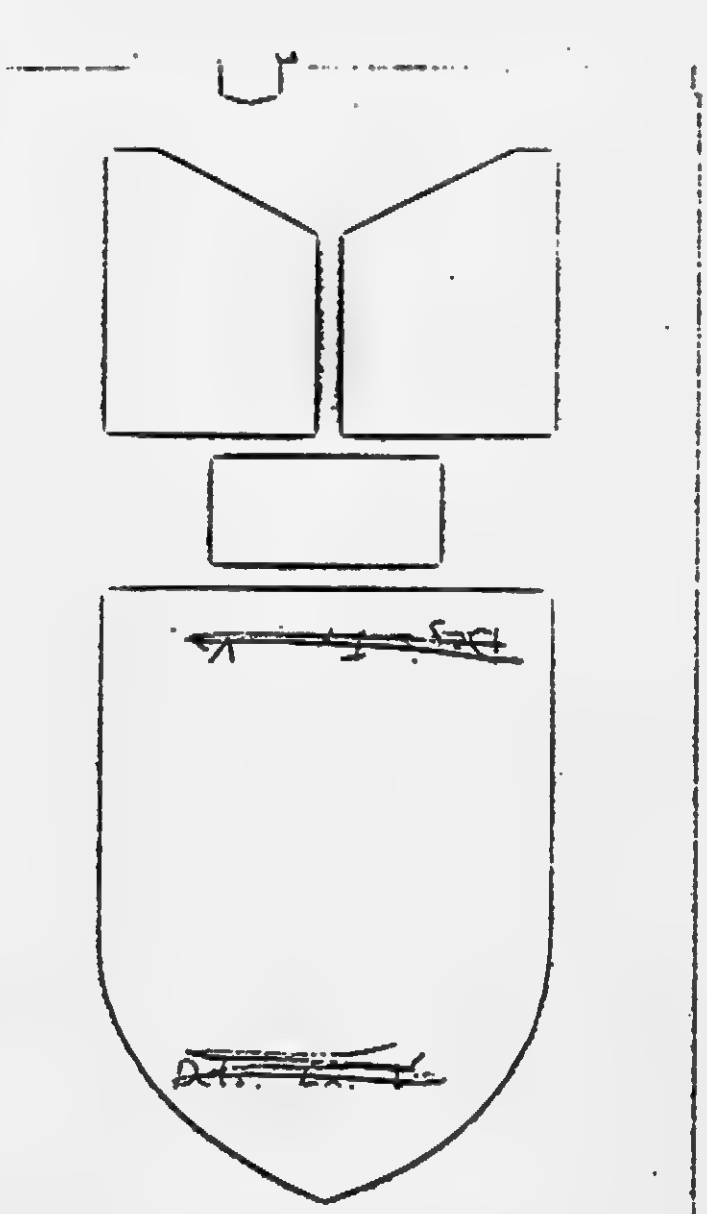
Name of Company _____ Location _____

Department _____ Shift Hr's. _____

I hereby designate and authorize the Oil, Chemical and Atomic Workers International Union, AFL-CIO, as my collective bargaining representative in all matters pertaining to wages, rates of pay and conditions of work. I also hereby authorize said Union to request recognition from my employer as my bargaining agent and/or to petition the National Labor Relations Board for an election for certification of said Union as my bargaining representative.

Date _____ Signature _____

RESPONDENT'S EXHIBIT NO. 2-B



NATIONAL LABOR RELATIONS BOARD
Case No. 17-CA-3021; 17-CA-3021-2
Resp. OFFICIAL EXHIBIT NO. 2-B
Disposition: Identified ✓ Received ____ Rejected ____
In the matter of George A. Hagle, d/b/a Kansas Refined Helium Company
Date 7/18/67 Witness Sutton Reporter Bass
No. Pages

No one is more interested in labor unions that the boss--expecially when he gets wind of his employees' starting any kind of a unionizing campaign.

His interest is understandable. His actions, however, are often close to unbelievable!

He knows that his employees should be allowed to use their own judgment, BUT SOMEHOW HE DOESN'T QUITE TRUST THEIR JUDGMENT, at least to do what he wants.

He knows he'd blow his stack if the workers ever stuck their noses in his union affairs--the Chamber of Commerce, Manufacturers' Association, or Merchants group--BUT THAT'S A DIFFERENT MATTER!

He knows there is a law protecting the workers' right to organize, BUT AFTER ALL, MAYBE THE WORKERS DON'T KNOW THEIR RIGHTS--and besides, THERE ARE EXPERTS TO HELP HIM "BEND" THE LAW A LITTLE AS HE TRIES TO "INFLUENCE" HIS EMPLOYEES.

In recent years the pattern of company interference in union campaigns has become very common--common because it happens frequently, and common because it takes much the same form each time.

Since it could happen here . . . since it will happen here if your employer has decided to go all-out in fighting your intent to organize . . . you might be interested in knowing something about the ways anti-union employers attempt to "influence" their employees' judgment concerning union membership. You should know what sort of anti-union propaganda blockbusters the boss may start dropping in his campaign to convince you that you don't want, or need, the union.

LOOK OUT FOR "LOVE LETTERS" from the boss. All of a sudden you may be favored by a burst of affection from the boss. For the very first time since you began to work for the company, the boss may start sending letters to your home. From these letters,

designed to be read both by you and your family, you will learn for the first time how "deeply concerned" he is about your welfare.

You may not have suspected it before, from the size of your paycheck, but these letters will reveal that the boss worries about your economic well being, at least to the point of being concerned about the way you spend your paycheck. He dreads the thought that you may waste your money--by paying union dues, for instance!

You'll discover another phase of his interest in your welfare: He is anxious that you not get mixed up with any "shady characters" --like union representatives, for instance! He may even describe them as crooks, mobsters or racketeers in his effort to convince you that they are "shady characters."

Furthermore, he has a great fear that you might lose your independence . . . become a slave to some labor "boss" who can order you out on strike at any moment even against your will!

Perhaps you hadn't realized it, as you and your fellow workers have been meeting and talking about the union, that the minute you become a union member you'll change into a strike-happy, irresponsible and violent individual. But the love letters will educate you on that score. They'll point out this tendency to strikes and violence that you hadn't noticed in your fellow workers and friends before.

The letters, of course, will forget to inform you that there are some 125,000 union contracts governing labor-management relations and that 97% of them are signed after peaceful negotiations. They'll forget to mention that more workers miss work because of colds than because of strikes, and that strikes have to be authorized by the workers themselves before they can be conducted.

You will learn, however, from the love letters the boss sends, that you are all part of a happy family, at work, and you will read his fervent hope that no foreign influence like the union will ever break up that wonderful, intimate relationship he says you've always enjoyed.

Did you know that the boss has always maintained an "open door" policy? Did you know that any time you had a grievance or felt any dissatisfaction about wages, hours, or any other part of your working conditions, all you had to do was pay him a little visit to talk it over? Well, if you haven't been aware of all this, the love letters will make it clear to you.

There are many, many more things the love letters will tell you. You'll enjoy reading them. You can tie them up with blue ribbon and put them in your hope chest. Hopes are about all you'll get, without a union.

LOOK OUT FOR RUMORS spread by foremen and supervisors. You may hear that raises are coming, "if only that union doesn't get it." You'll hear that the boss knows whom he can "trust" and who is a "union-sympathizer." You will hear that those who are backing the union have always been trouble-makers who have never carried their share of the work.

You may hear that the boss "has his eye on you"--that he has been thinking about giving you a raise or a promotion. Or you may hear that he is "wondering" about you and just can't believe that you would be "disloyal."

You may hear that the boss is thinking of moving the company to another city or state if the workers vote for the union--or that he has told a close business friend that he just will not be able to get along with the union and will probably have to shut down!

You may hear that the union will demand "industry-wide seniority". . . that if a union place "up north" or "down south," or "out west" has a layoff, the union will shift those workers here and bump you out of a job!

You may hear that unions don't permit more than one member of a family to work in the same place--actually make the boss fire wives whose husbands work for the company, and that children, parents or

other relatives of workers can be thrown out of their jobs because of such union rulings!

Such rumors may sound fantastic to you, and they are, but they've been used by many a company in many an anti-union campaign.

LOOK OUT FOR "COMMITTEES OF LOYAL EMPLOYEES" that suddenly come into existence, and start issuing letters and leaflets urging you to "stick with the boss." You will notice that these employees speak openly during working hours, use their names on handbills, and appear to be conducting their own campaing. They will deny that they have any connection with the boss and will be "amazed" that anyone should think such a thing. They are just interested workers who don't like unions and who are willing to pay the cost of leaflets, and mailings, to help keep the union out--so they say!

LOOK OUT FOR "SPECIAL COMMITTEES" of local business men and civic leaders. These special committees also spring up overnight, like the special committee of loyal employees described above. This new-born committee will claim that it is interested only in your welfare when it urges you to help keep "those dirty unions" out of the community. Again, like the committee of loyal employees, this group will insist it has no connection with the company. Naturally, it will be pure coincidence when the committee's newspaper stories and advertisements are identical with statements printed by similar "committees" in other communities.

And don't be surprised if some members of this special committee of interested citizens call upon members of your family, to urge them to ask you not to vote for the union. You may not be accustomed to having the town banker, the editor of the newspaper, or the credit manager of the finance company from which you borrowed some money, call upon you in your home. But they might just do that. It's happened in other places, why not here?

LOOK OUT FOR SPECIAL MEETINGS CALLED BY THE BOSS. The best name for these meetings is "captive audience meetings." They'll be held on company time and will feature a little homey chat from the boss himself. It may be the first time he's ever felt moved to call you together that way--at his expense--but he'll do it now, because he feels that it is so important that you know the "facts of life" or "understand" his problems. He'll remind you of all he and the company have done for you and your community; he'll tell you that you and the company are partners in a great enterprise and that you will make progress together. But he'll sadly inform you that there won't be any more "togetherness" if you decide to join that "outside" union.

He may read from a printed statement to be sure that he doesn't get too excited--say what he really means, and thus violate the law. If you listen to the words of the speech carefully, you will realize that he isn't actually saying that he will fire anyone, or close down the company if the union wins, but you and your fellow workers won't have any trouble getting his "message."

The boss may use this captive meeting to call for an "open vote." He may ask all "loyal" employees to raise their hands and then declare that those who are for the union don't have the courage of their convictions.

If he follows the pattern, he'll suggest that a vote for the union is a vote to destroy the company and your job. He won't attempt to explain how that fits in with the fact that over 14 million American workers belong to AFL-CIO unions, and the companies for which they work seem to be flourishing!

Your employer may use any, or all, of these various devices--letters, rumors, threats, phony committees, captive meetings--and others not mentioned here, in his attempt to convince you that you don't want or don't need a union. All of these methods are contained

in standard propaganda packages developed and sold by professional union-busting specialists who are paid, and paid well, to confuse workers and get them to vote against their own best interests.

Don't let some highly paid "specialist" tell you how to think. Don't be tricked into voting against yourself.

Neither the boss nor the anti-union specialist he hires will belong to, or run your union. They have their own "unions." This union is different--it's yours; you run it!

The final decision must be, and is, up to you!

While you're waiting for election day, the day you make the great decision, keep looking out for the blockbusters. They're almost bound to come.

Then, on election day, look for the union box on the ballot and vote for your own benefit by voting for your AFL-CIO union.

RESPONDENT'S EXHIBIT NO. 2-C



So you think you got a dirty deal from the foreman or the big boss up in the front office? What are you going to do about it? Bellyache? Go tell the super off?

How far will you get with your complaint?

If the boss wants to, he'll fix things up the way you want them. If he doesn't want to hear your story he'll tell you to go to———. (That is, that's what he will tell you *if you don't have a union* backing you. With a union, it's different.

It is in the handling of beefs, or grievances, that a good labor union does the most good. Just as important as wages, hours, vacations, sick leave, etc., is the union's function in supplying you with a way of settling grievances.

Under the typical Oil, Chemical and Atomic Workers Intl. Union contract, there is a grievance committee set up in each plant or group. If you have a grievance, you tell it to this committee—a committee elected by your fellow workers. If your beef is any good, they go talk to management about it.

The management, knowing that a big union stands behind that grievance, often settles it right then and there. But if the management is not willing to settle, the complaint is then taken before an impartial arbitrator. The arbitrator hears testimony from both sides and makes a ruling that both sides have to live up to.

Your beef has a chance when you're backed up by the union!

Oil, Chemical and Atomic Workers

———— International Union – AFL-CIO-CLC ————

#15

PRINTED IN U.S.A.

RESPONDENT'S EXHIBIT NO. 2-D



HOW MUCH Will I Gain Through a Union Contract ?



"Just what can we gain by having a union?" This this a question union organizers are often asked. And there are just about as many answers to the question as there are groups that organize.

Funny, when you hear about *somebody else* organizing a union you think about them organizing for higher wages. But when it's you, *you may be organizing for an entirely different reason!*

Sure, it *may* be for higher wages. But the one single thing that makes employees organize than any other is bosses playing favorites, giving the better jobs to friends, or maybe just to people they happen to know better than the ones who deserve the higher jobs.

With a union contract a system is set down in black and white so every employee knows how he can advance to better jobs when they become open. Usually the man or woman with the most seniority can get the better job *if he wants it* and can handle it, or can learn to in a reasonable length of time.

Sometimes people organize because they want better insurance or an improved pension plan. In this case the boss might even be willing to improve the plan, but there are so many varieties and combinations he couldn't know what the majority of employees wanted unless they had a good organization with experts to advise them.

These are just a few of the reasons people organize unions.

Wages? Of course! Employers simply don't pay all they can afford to pay because raises come out of possible profits. They will pay more if the employees get together in a good union and demand it.

And what you gain in your first union contract depends largely on how well you organize. If your group is signed up close to 100 percent and stick together, you will get a contract as good as the best. If you are only half-organized, the contract won't be as good.

Each OCAW representative has had years of experience in negotiating contracts. He has the know-how. With this knowledge, he will help you negotiate a good contract.

But it's up to *you* to organize a strong union to get the best possible deal.

Oil, Chemical and Atomic Workers

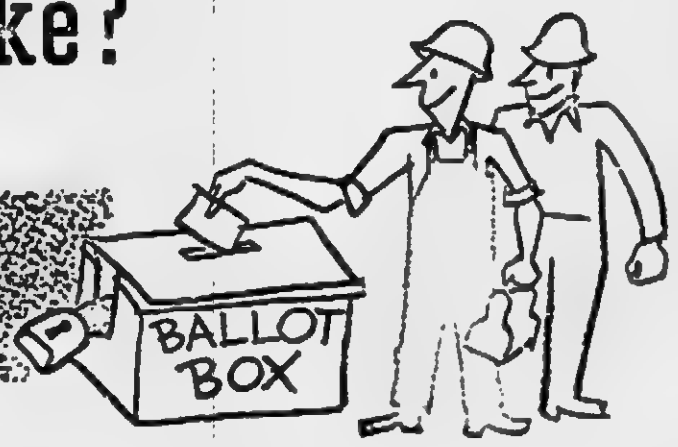
International Union – AFL-CIO-CLC

#18

PRINTED IN U.S.A.

RESPONDENT'S EXHIBIT NO. 2-E

who calls a Strike?



There have been many false stories circulated about how strikes are called by labor unions, so we want to tell you how they are called in Oil, Chemical and Atomic Workers Intl. Union.

In the first place, this union does not like strikes. It prefers to settle disputes with management in peaceful fashion at the conference table. But if a peaceful settlement cannot be reached, it is the right of free men to strike for what they believe is just.

If all efforts at bargaining fail, the group of members concerned in a particular dispute may ask for a strike vote. Such strike vote is carried on by the local union concerned. Before a strike may actually be called, the members who would be involved in the strike must vote in favor of it.

Oil, Chemical and Atomic Workers Intl. Union gives financial support to a strike only if *three-fourths* of the men concerned have voted in favor of it by secret ballot.

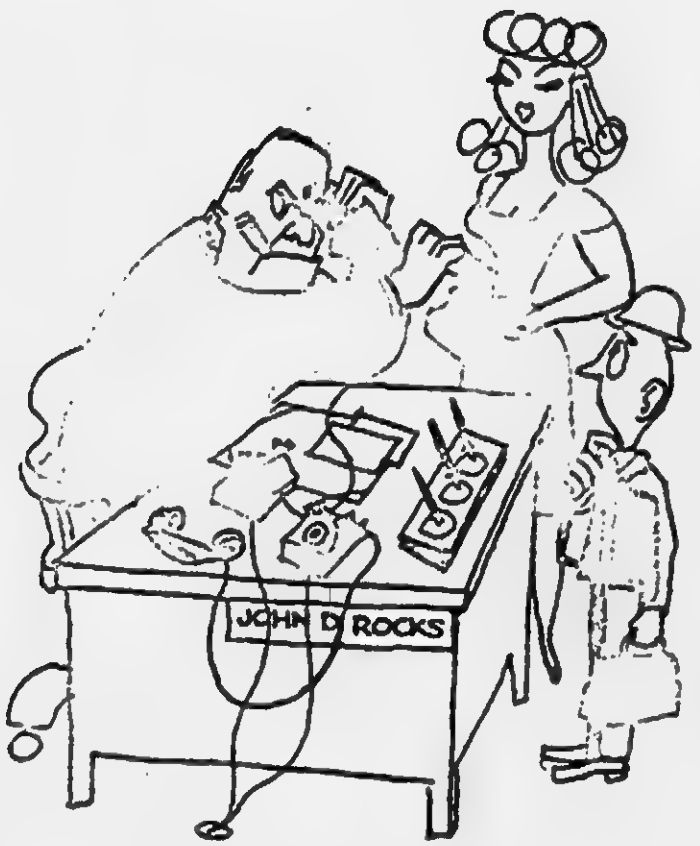
Who calls a strike in Oil, Chemical and Atomic Workers Intl. Union? *The men and women who do the striking call it!* No other person or group of persons can call a strike!



Oil, Chemical and Atomic Workers

International Union

RESPONDENT'S EXHIBIT NO. 2-F



JUST A MATTER OF ARITHMETIC

When you go, all by yourself, in to talk to your boss, you may be talking to the nicest guy on earth.

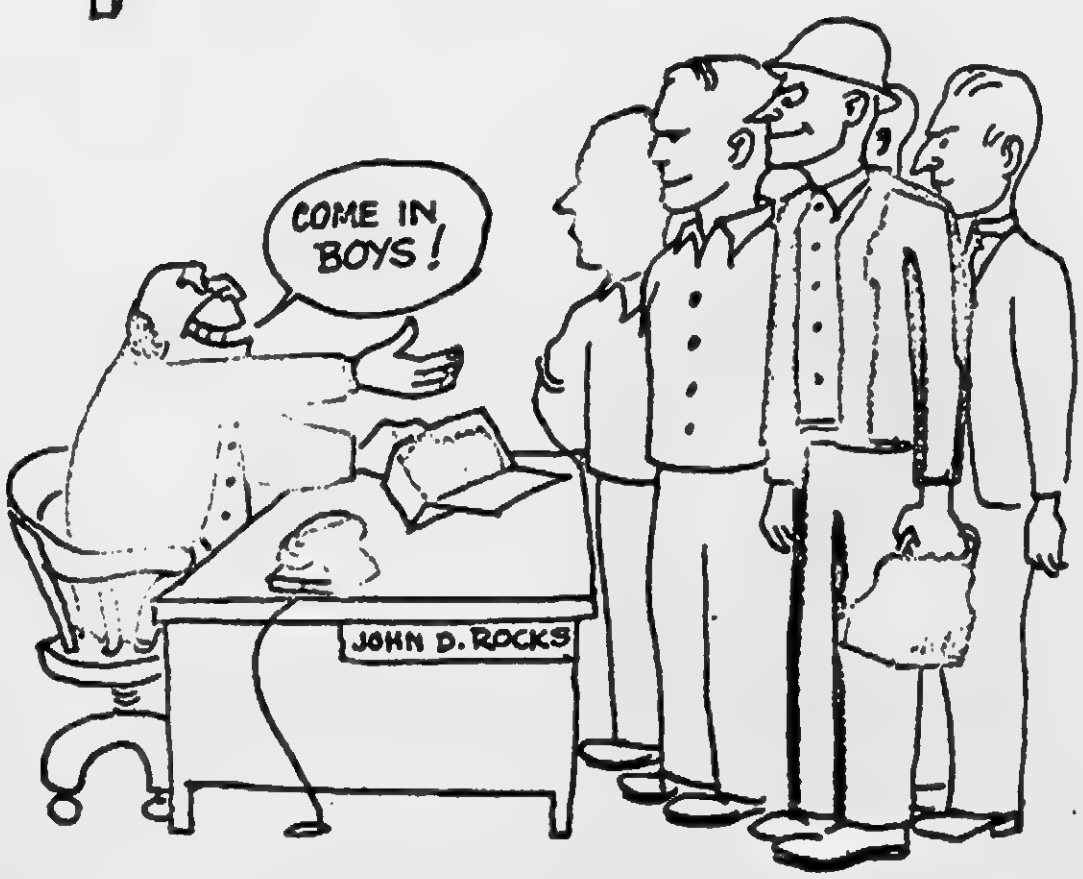
But he's a busy man, with many problems. He does not have time to pay much attention to you, standing there by yourself. You ask him for something and unless he was planning to give it to you anyway, he says, "No." And then he quits worrying about it.

He's a bigger man than you, because he has a million bucks or so behind him and you have maybe a hundred bucks in the bank and a $6,000 mortgage on your house.

But if all the men in your company went to the boss at once, he'd pay attention. He'd have to. Together, the men working for your company have the welfare of the boss' business right in their hands.

A labor union consists of *all of the men* talking to the boss at once. When *all of the workers* organize and send a committee in to see the manager, he will listen. He won't usually listen to one lone man.

None of us has enough chips to play a hand with the big oil and chemical companies. But by pooling our chips together and using our nerve, we can play him a good hand.



Oil, Chemical and Atomic Workers

International Union – AFL-CIO-CLC

PRINTED IN U.S.A.

#1

RESPONDENT'S EXHIBIT NO. 3

Oil, Chemical and Atomic Workers

International Union

INTERNATIONAL REPRESENTATIVE

8101 S. Mead
Wichita, Kan. 67233
October 21, 1966

TO ALL OCAW MEMBERS
KANSAS REFINED HELIUM COMPANY
Otis, Kansas Plant

Dear Sir:

As you will recall, we had advised you of the delay in holding the NLRB secret ballot election among the employees of Kansas Refined Helium Company by reason of our filing of Unfair Labor Practice Charges against George A. Angle d/b/a Kansas Refined Helium Company on two counts; the interrogations and threats made, and the discharge of employees for Union activity.

It now appears desirable to proceed to have the NLRB election as soon as feasible. Before doing so, however, we would like to discuss some of the interesting aspects of such action with you, the members, who have made such action possible.

With this thought in mind, OCAW members only, are requested to attend an OCAW meeting to be held in Hosington, Kansas, this coming Tuesday, October 25, 7:30 P.M. at the Redwood Motel, Room 16, near the junction of U. S. Route 281 and Kansas State Route 4.

We hope you will make every effort to attend.

Fraternally,

/s/ Hager Patton

P.S. We have been advised by the NLRB our CA charges are being processed. They will attempt to effectuate a settlement, but failing to do so, as we expect, complaint will be issued and hearing on the charges will be held. This process could take some time to finally reach conclusion. We are confident in the outcome - we will be patient - even though the wheels of justice sometimes grind more slowly than we would like.

RESPONDENT'S EXHIBIT NO. 4-A

8101 S. Mead
Wichita, Kansas 67216

Mr. Martin Sachs, Regional Director
Region # 17
National Labor Relations Board
1200 Rialto Bldg.,
808 Grand Avenue
Kansas City, Missouri 64106

Dear Sir:

Enclosed herewith is the original and four (4) copies of RC petition being filed for and in behalf of employees of Kansas Refined Helium Company at its Otis, Kansas plant. Also enclosed are application cards for membership in the Oil, Chemical and Atomic Workers International Union from 30% or more of the employees in such plant, along with an alphabetical listing of such applicants. Also enclosed is copy of our letter of June 28, 1966, addressed to the Kansas Refined Helium Company requesting recognition of this Union for collective bargaining purposes.

It is requested that copies of all correspondence, notices, directives, etc. be furnished the undersigned and to:

Mr. John Tadlock, Actg. Gen. Counsel
OCAWIU
P. O. Box 2812
1840 California St.,
Denver, Colorado 80201

Mr. Joe Appelbaum, Org. Co-ord.
P. O. Box 2812
1840 California St.,
Denver, Colorado 80201

Mr. Robert Dickel, Dir.
District No. 5 OCAWIU
Suite 710 McDirney Bldg.
8 East Third St.,
Tulsa, Oklahoma 74108

and that they be considered as parties to this action the same as though they were signatories hereto.

A copy of the RC petition and copy of this letter is being sent the Company in order they may be advised of our action in this matter.

May we also request that on direction for an election we be furnished a list of names and addresses of all employees to be included in the unit, in accordance with the Boards' Rules and Regulations.

Very truly yours,

Oil, Chemical and Atomic Workers
International Union

Roger Patton
International Representative

encls.

cc: Mr. John Tadlock
Mr. Joe Appelbaum
Mr. Robert Bickel

Kansas Refined Helium Company
Otis, Kansas 87565
Attn: Mr. Buddy Owens, Plant Manager

RESPONDENT'S EXHIBIT NO. 4-B

Form NLRB-502
(11-60)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved.
Budget Bureau No. 64-R002.14

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO.

DATE FILED

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

- ☒ RC—CERTIFICATION OF REPRESENTATIVES—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM—REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD—DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD—WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC—UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____.
- ☐ AC—AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____.

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER	EMPLOYER REPRESENTATIVE TO CONTACT	PHONE NO.
[illegible]	[illegible]	[illegible]

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State, and ZIP Code)*

[illegible]

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*	4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE
[illegible]	[illegible]

5. Unit Involved *(In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included: All production and maintenance employees of the company engaged in the operation and maintenance of the coke, benzol, plants.

Excluded: All supervisory employees, office clerical employees, professional employees and guards as would be excluded under the Act.

6a. NUMBER OF EMPLOYEES IN UNIT:
PRESENT [illegible]
PROPOSED (BY UC/AC) _____

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT? ☒ YES ☐ NO

* Not applicable in RM, UC, and AC

(If you have checked box RC in 1. above, check and complete EITHER item 7a or 7b, whichever is applicable.)

7a. ☐ Request for recognition as Bargaining Representative was made on [illegible] *(Month, day, year)* and Employer declined recognition on or about [illegible] *(Month, day, year)* *(If no reply received, so state)*

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent *(If there is none, so state)* [illegible]

NAME [illegible]	AFFILIATION [illegible]
ADDRESS [illegible]	DATE OF RECOGNITION OR CERTIFICATION [illegible]

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)*	10. IF YOU HAVE CHECKED BOX UD IN 1. ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*
[illegible]	

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES ____ NO ____	11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING? [illegible]

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF [illegible] *(Insert name)*, A LABOR ORGANIZATION, OF _____ *(Insert address)* SINCE _____ *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*
[illegible]	[illegible]	[illegible]	

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

[illegible] *(Petitioner and affiliation, if any)*

By _____ *(Signature of representative or person filing petition)* [illegible] *(Title, if any)*

Address [illegible] *(Street and number, city, State, and ZIP Code)* [illegible] *(Telephone number)*

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

[illegible]

GPO 863-948

RESPONDENT'S EXHIBIT NO. 4-B

Form NLRB-502 (1-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved.
Budget Bureau No. 64-R002.14

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO.

DATE FILED

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(Check one)

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- ☐ RM—REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD—DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD—WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC—UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____.
- ☐ AC—AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____.

Attach statement describing the specific amendment sought.

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[illegible]	[illegible]	[illegible]

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State, and ZIP Code)*

[illegible]

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*	4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE
[illegible]	[illegible]

5. Unit Involved *(In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included: All production and maintenance employees of the company engaged in the operation and maintenance of the coke, benzol, plants

Excluded: All supervisory employees, office clerical employees, professional employees and guards as would be excluded under the Act.

5a. NUMBER OF EMPLOYEES IN UNIT:

PRESENT [illegible]

PROPOSED (BY UC/AC) _____

6a. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT? ☒ YES ☐ NO

* Not applicable to RM, UC, and AC

(If you have checked box RC in 1. above, check and complete EITHER item 7a or 7b, whichever is applicable.)

7a. ☐ Request for recognition as Bargaining Representative was made on [illegible] *(Month, day, year)* and Employer declined recognition on or about [illegible] *(Month, day, year)* *(If no reply received, so state)*

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent *(If there is none, so state)* [illegible]

NAME	AFFILIATION
[illegible]	[illegible]
ADDRESS	DATE OF RECOGNITION OR CERTIFICATION
[illegible]	[illegible]

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)*	10. IF YOU HAVE CHECKED BOX UD IN 1. ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*
[illegible]	

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES ____ NO ____	11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING? [illegible]

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF [illegible] *(Insert name)*, A LABOR ORGANIZATION, OF _____ *(Insert address)* SINCE _____ *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*
[illegible]	[illegible]	[illegible]	

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

[illegible] *(Petitioner and affiliation, if any)* [illegible]

By _____ *(Signature of representative or person filing petition)* [illegible] *(Title, if any)*

Address [illegible] *(Street and number, city, State, and ZIP Code)* [illegible] *(Telephone number)*

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 883-946

RESPONDENT'S EXHIBIT NO. 5

Oil, Chemical and Atomic Workers

International Union

INTERNATIONAL REPRESENTATIVE

8101 S. Mead
Wichita, Kansas 67216
August 2, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. George A. Angle
Kansas Refined Helium Company
1720 Wichita Plaza
Wichita, Kansas 67202

Dear Mr. Angle:

It has come to our attention that very recently you granted very generous wage increases to employees of your other Companies and have stated: "The question came up about raises for KRH employees. I have checked and found that the union can file unfair labor practices charges against us if we either give or promise to give new raises to any employees that the union claims to represent."

This is to advise you, and by copy of this letter to the National Labor Relations Board they are likewise advised, that the Oil, Chemical and Atomic Workers International Union will not file unfair labor practice charges against you or your company by reason of your granting to employees of KRH the same or similiar wage increases as granted to your other employees so long as such wage increases are granted on an equitable and non-discriminatory manner, now or at any time before the NLRB election among KRH employees.

By copy of this letter to the NLRB, they are requested not to entertain any unfair labor practice charge that could be filed by this Union against you or your Company by reason of your granting to the KRH employees wage increases under the conditions set forth above.

You may now feel free to make the same generous additional wage increase to your KRH employees. We hope you will.

Yours very truly,

/s/ Hager Patton
International Representative

cc: NLRB, Kansas City, Mo.

RESPONDENT'S EXHIBIT NO. 6

Oil, Chemical and Atomic Workers

International Union

INTERNATIONAL REPRESENTATIVE

2101 S. Mead
Wichita, Kansas
67216

Kansas Refined Helium Employees
Otis, Kansas

Dear Employees:

The National Labor Relations Board under date of August 25th issued its decision and direction for an election in your plant. In its decision and direction the NLRB rejected the Company contention that the unit should cover all operations of the other companies of George A. Angle, and that casual and temporary employees should be entitled to vote in the election.

The NLRB held that the Senior Operators were excluded from the unit on the basis they were Supervisors within the meaning of the ACT. This is contrary to our belief and contention.

Since this ruling of the Regional NLRB is subject to appeal, it is the intent of OCAW to appeal to the NLRB in Washington, D. C. the ruling with respect to the Senior Operators. We would have hopes of reversing this point, though we recognize reversal of the Regional NLRB is somewhat difficult.

Ordinarily, an election would be held within thirty (30) days of the issuance of the NLRB Decision and Direction of Election. Our appeal will have the effect of delaying the election until the full Board rules on it. How long a delay, we don't know; but would anticipate from sixty to ninety days, depending on the case load of the Board.

So--- there will be an election in your plant regardless of what someone may have said. There will be a delay--which as a matter of fact we had anticipated, but had thought the Company would be the reason for it--- as they may also appeal--- but eventually you will have your Union.

Sincerely,

/s/ Hager Patton
International Representative

RESPONDENT'S EXHIBIT NO. 7

Oil, Chemical and Atomic Workers

International Union

INTERNATIONAL REPRESENTATIVE

8101 S. Mead
Wichita, Kansas 67216
August 1, 1966

To Employees of Kansas Refined Helium

Dear Employee:

Well---Well---Well---the steaks, beer, whiskey, tidbits, "love letters" and good fellowship are beginning to flow line wine--and that treatment will last---may even get better---until The NLRB Election.

You know, --- I know, --- and George knows, that all this has only one objective---an attempt to sway you away from your indicated desire to have your Union in your plant.

George will succeed in this if you let him---<u>BUT ONLY IF YOU LET HIM.</u>

There is this to remember--to be united and have a Union when you need it, you have to organize before you need it. The old slogan: "United we stand- divided we fall" still holds true. We won't say you are 100% united, - we can say you are darn close to it.

Are you going to be one who lets his fellow worker down? We don't believe so. We believe you can eat his steaks, drink his drinks, read his "money dangling" letters and still be a loyal, dedicated, co-operative, concientious employee <u>and</u> UNION MEMBER. Heck, --- we have them all over.

There have been some developments we would like to report to you, SO,--- an OCAW meeting is set for 7:30 P. M. on this

Thursday, Aug. 4, at the Holiday Inn, Great Bend, Room 314. You are cordially invited to attend. We hope you will.

Sincerely,

Hager Patton, Int'l. Rep.

P. S. We would like to have some more copies of that "Money Dangling" letter. Will you bring yours?

H. P.

RESPONDENT'S EXHIBIT NO. 8

INTRA-ORGANIZATION COMMUNICATION

FROM Robert M. Bickel, Director District No. 5

TO Hager Patton, Representative

Date June 30, 1966

SUBJECT: 05-255 Kansas Refined Helium Company
Otis, Kansas

We have opened the above referred to file and you may consider this your assignment to assist in organizing the above group of employees.

When you have disposed of the subject matter, please return the file with all pertinent information, including the results of the election and certification from the Board and we will then submit Form F-136 Official Report OCAW Bargaining Units to the Organizing Coordinator in Denver.

RMB:cr

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION

RESPONDENT'S EXHIBIT NO. 9

Mr. George Angle
Plaza Bldg.
Wichita, Kansas 67200

Received June 25, 1966 A.M.

Dear Sir:

You have at your Otis Plant a situation of which I feel you should be apprised. Perhaps this is none of my affair, as it affect me indirectly. However, if your plant does not run, it will affect my position.

The information in this letter is either from personal observation or first hand from the people involved.

Until the last few months your personnel, both supervisory and operational maintenance, were very faithful to you and your company in their loyalty. Now, that picture has changed, not to you specifically, but toward the management of your plant.

The man who has assumed the position of plant manager and god, has managed to not only alienate all of his own employees and supervision, but also everyone in the Airco organization and everyone else who has had the misfortune to deal with him.

Dealing with particulars--he spends all but about an hour of his work day doing operator work and maintenance work out in the plant proper, this has been a helping factor in the men learning the mans incapabilities and losing all respect for the man. He very clearly is a man very unsure of his ownself and is running scared, and is obviously losing his grip. He literally runs like a madman from place to place in the plant, turning valves on the various systems, then blythly forgetting to tell the operators concerned, that he has done so, thereby upsetting the operation (many times badly) and stability of the plant. However, he spends most of his time getting in the way of the people trying to

load the gaseous and liquid helium trailers and with the analysis of the products in same. His work in this respect has been disastrous. He opens the wrong valves or the right valves at the wrong time, contaminating the contents of the trailers, lines and instruments, as well as Airco's bottles when they are filling. Then runs around trying to correct his mistakes costing the company many hours of time as well as product, meanwhile blaming everyone but himself for his fiasco's. He had qualified, efficient men for these jobs if he would get out of their hair, go back in his office where he belongs and be quiet. Then no one would ever know of his incompetence. His help, his supervision all hate him with a passion, and Airco company people make no bones about their intense hatred for the man and his methods.

On several occasions he has contaminated the bottles and gas trailers and then blames Airco for it, at the same time his own operators have witnessed his errors when HE did so. This is common knowledge. Until recently when talking to your personnel, I heard very little dissatisfaction. Now when I am around them, their seems to be no other topic of conversation among them. From the newest man to the oldest, they laugh about his blunders, many of which he would have fired them for. They laugh, yet they are tremendously unhappy, because he is making life miserable for all of them.

You probably don't realize the full significance of losing the type of personnel you have at your plant, but I have been around a lot of plants and you have, on the whole, one of the most qualified groups of men that I have seen, particularly the original group you hired. Of course, you obviously picked them for their experience and qualifications, which every plant needs to operate efficiently. How you have kept men of this caliber is rather amazing, considering the conditions, the work load, no benefits, and the wage scale. Many

of them are at the present time looking for other employment and no doubt several will be leaving in the near future. This includes your supervision. I know the above because they confided in my personally. Something has to be drastically wrong when this many good men are wanting to get out.

This man threatens to fire anyone and everyone if they cross him at all, even though they are absolutely in the right on many and most issues. From his Captain Queeg point of view, no one is right but him.

You will no doubt, either ignore this letter, or discount it, but it might be worth your time to investigate the facts for yourself. No doubt none of your men would admit their feelings to you, because, until they have another job ready to go to it would be foolish to do so.

In case you don't think it is serious, one of the top Airco men out at your plant last week, stated after being acquainted only a couple of days, that he hoped you got rid of him, because he would without question, in a short time have a union in your plant, and then their personnel would organize. What he said is an irrevocable fact. Never have I witnessed as much unrest and dissatisfaction as is apparent in every level of your personnel, and never have I witnessed more just cause. When you begin to fire these men for trying to protect themselves, remember who triggered the whole thing.

He has cost you more money, literally and cost you much more in these other respects than could be redeemed in a hundred years.

RESPONDENT'S EXHIBIT NO. 10-A

TO WHOM IT MAY CONCERN:

If the ultimate purpose of Mr. Angles' speech at the steak dinner was to completely alienate the men working for him at his helium plant - it was a howling success.

They are all extremely disturbed and mad about his outbursts. Contrary to what he obviously believes, the men at his plant are (on the whole) very loyal to the company and concientous about their work, up until the other night.

Many of these men have worked in the oil patch, on section gangs, dug ditch, etc. Now because they have, through hard work, diligence, brains, study and in some cases luck, managed to better themselves - their reward, rather than being praised or at least accepted for their small accomplishments, has not been anything but vitriolic abuse.

Admittedly, the man who triggered this tirade was attempting to 'make points' for himself, while running down others with whom he worked. He - being the master goofoff he is and the laziest, poorest worker in his department, but by far the most prolific talker in the group was attempting to further his own personal image in the big bosses sight. IT BACKFIRED.

The men in his plant have known considerable hard work and hardship since being in his employ. They worked many hours last winter in the bitter cold, in the howling wind and snow, on some occasions in sub-zero weather, thawing and working on the MEA system and other equipment, in a bitter battle to keep his plant on the line. Ever on top of one of those towers in zero weather, 40 mile winds, with a steam hose? His men have been.

Just the last couple of weeks has seen some of his 'softies' and unfaithful dogs working in nearly unbearable heat for 24 hours and more, straight through, with seemingly unflagging strength to get engines running and keep his plant on the line. Ever inside the crankcase of one of those hot engines, trying to work in 100 degree weather? His men have been.

He apparently has no concept of the type of men he hired. All but maybe two of them are men of integrity, honest, and faithfulness. These men were hired from across the country because of their experience and educational backgrounds. They have proven themselves to be excellent operators and maintenance men, despite American Messers' attempts to keep them from learning their jobs.

Now, it boils down to the fact that they are not and never will be appreciated because the people in control do not understand that they did not hire illiterate peasants to do a difficult, modern day technical job.

By the way, the men at his plant do know the hardships of the men in the oil patch, and do appreciate them and their work.

RESPONDENT'S EXHIBIT NO. 10-B

KANSAS REFINED HELIUM COMPANY

1720 Wichita Plaza, Wichita, Kansas 67202

July 29, 1966

TO: All KRH employees
In answer to: "TO WHOM IT MAY CONCERN" letter attached.

This letter is going to all KRH employees, as did my letter dated July 27. KRH employees now total 28, including Norman Klein. We will also post this on the KRH bulletin board, and in case the bulletin board copy gets frayed, we have other copies to replace it.

The writer of the attached letter indicates he speaks for all KRH personnel. In this letter he continues to explain your personal thoughts toward me, and even more amazing, in one evening, analyses me and my thoughts toward you.

I think this is absolutely phenomenal and I am amazed at the abilities this writer has. Such as, he can work with 28 people and completely understand their personal thoughts, in one evening, he can understand me so completely, he is able to write all of the 28 KRH employees analysis of their thoughts, discuss me and my thoughts, and predict the future for all of us.

With these abilities, there is no doubt in my mind but that the person who wrote this letter is grossly underpaid, $1000 per hour would be too little. For a corporation, with several hundred thousand employees, a thousand dollars per minute would not be adequate compensation. This man has amazing ability of physiological interpretation and leadership to be the spokesman for the 28 KRH employees who are such individuals and in addition to that the authorization so as to be able to compose such a letter as you are reading now. When we have

one person with all of these abilities, there is probably no reason for the employees to have ever signed their union pledge cards, or for me to be worrying about plant problems, management, sales, other helium plants competition, keeping the helium customers we have now, I think we should just elect this person unanimously to handle management of the KRH plant and all of the KRH employees. The unusual abilities you have, not adding your name to this letter, was probably an oversight, because this would be so routine and normal, it was too far removed from the unusual abilities you have, as Einstein forgot to sign some of his theories.

I am certain when you read my answer and understand your oversight in not giving all of us your name, you will let us know. At that time I am sure all of the employees at KRH and myself will unanimously elect you to manage the plant, solve all personal and business problems for all the employees at the plant and the same problems for me.

I am sending a copy of this letter to all plant personnel in case you did not know this writer has assumed the authority to speak for all of you. Also, in case the writer represents any of you, I wanted to be certain to help him and be sure you got the benefit of his last writings and my answer. I would appreciate hearing from you personally as to your thoughts on this letter.

Sincerely yours,

KANSAS REFINED HELIUM COMPANY

GAA:mvs

/s/ George A. Angle

P. S.: I received a letter from this same writer sent to me about the plant some time ago of this same nature, which I should have realized was of unstable mind. I will advise you of the contents of that letter later. I am sure it must give you and your wife something to think about, as it does me, to realize we have a person like this in the midst of us.

RESPONDENT'S EXHIBIT NO. 11

TO WHOM IT MAY CONCERN:

To inform you that the lesson of former actions and the appropriate chastisement fell on deaf ears - the supervision at your plant is up to it's practices. Your future one is also adopting the practices of his still present predecessor, the same domineering, interfering, dictatorial tactics. You can see this will further your cause a great deal.

Another group of brown nosers, dedicated to it - Julian, Foos, Smith, Sims, Ham, Durbin, Call, Myers, Bishop - these men are showing there willingness to do anything to curry favor, a most worthy group of sucks. They do not have the guts to fight for what at least some of them know is right.

If you need any further assistance than the above can give, maybe someone else can be added in the future.

Mr. George Angle
Kansas Refined Helium Co.
1720 Wichita Plaza
Wichita, Kansas 67202

[Envelope - Stamped "Great Bend, Kans., Aug. 29, 1966]

RESPONDENT'S EXHIBIT NO. 14

C. Law(s) | D. B. Y. E.
E. Type | F. Claim date
G. (C. O. Use) KUC 63 | Mailed
Date: | By:

Russell | M | Sims | 512 - 22 - 0116

3. Sex: ☒ Male ☐ Female | 4. Year Born: 1926 | 5. MAILING ADDRESS—Street and Number, Rural Route or P. O. Box No. City, Zone and State: Box 742 La Cross KANSAS

6. Other Names or Social Security Numbers worked under during past 18 months, if any

7. Have you refused any offers of work in the past 7 weeks? ☐ YES ☐ NO

8. WORK HISTORY—List separately, each period of employment or other activity during the past 18 months. Include each job, periods of self-employment, military service, work for the government and attendance (more than half-time) at a school or college.

EMPLOYERS' NAME AND PAYROLL ADDRESS	Details of Each Job		
LAST EMPLOYER (Regardless of state in which worked or size of firm) Firm Name of Employer: Kansas Refined Helium Street and Number: City, Zone and State: OTIS Kansas	REASON FOR LEAVING LAST JOB (Show Quit, Fired, Leave of Absence or Lack of Work): Fired KIND OF WORK DONE (Job Title): Senior Operator Shift Supervisor	DATES WORKED: FROM 7/26 1965 THROUGH 9/2 1966 RATE OF PAY: $ 3.85 per hr.	
NEXT TO LAST EMPLOYER Firm Name of Employer: National Helium Corp. Street and Number: City, Zone and State: Liberal, Kansas	REASON FOR LEAVING NEXT TO LAST JOB: Quit, Management spread KIND OF WORK DONE: Operator	DATES WORKED: FROM 8/11 1963 THROUGH 7/2 1965 RATE OF PAY: $ 3.11 per hr	
NEXT EMPLOYER Firm Name of Employer: Street and Number: City, Zone and State:	REASON FOR LEAVING JOB KIND OF WORK DONE	DATES WORKED: FROM 19 THROUGH 19 RATE OF PAY: $ per	
NEXT EMPLOYER Firm Name of Employer: Street and Number: City, Zone and State:	REASON FOR LEAVING JOB KIND OF WORK DONE	DATES WORKED: FROM 19 THROUGH 19 RATE OF PAY: $ per	

SYMBOLS—'C' law (s); 'E'—KUI, 'F'—UCFE, 'X'—UCX. 'E' Type: N—new, T—transitional, A—additional (add 'F' for partials)

H. To report | I. Attach KUC
J. Occ. code | K. Industry: 2513
L. REMARKS:

9. Have you filed an Unemployment Insurance Claim before? ☐ YES ☒ NO
If 'YES' give date 19
Under what State or Federal Law?
Where filed? (City and State or Local Office)

10. Are you receiving or applying for: Workmen's Compensation or similar payments under any law? ☐ YES ☐ NO
Benefits under the Unemployment Insurance law of any other state or of the Federal government? ☐ YES ☐ NO

11. CERTIFICATION: I am unemployed, able to work and available for work. I register for work and request determination of my rights to benefits under the Kansas Employment Security Law. I have been assigned a regular report time and understand that I must report at that time to continue my registration for work and claim for benefits.
All statements and entries on this form are true and correct to the best of my knowledge and I so certify knowing that the law provides penalties for false statements or withholding information to obtain benefits in violation of the Law.

M. Claim Accepted and Federal U. I. Eligibility checked by: LP

12. WRITE YOUR NAME HERE X Russell M. Sims

INSTRUCTIONS TO CLAIMANT

Complete ALL items numbered '1' through '10'. READ item '11'. Write your name in item '12' including your first name, initial and last name as it appears in item '1'.

Make NO entries in items lettered 'A' through 'M'.

PRINT all entries except your signature. Press hard enough to make a good carbon imprint on the two forms underneath.

Entry of your CORRECT Social Security Number is important. A mistake will delay your claim.

Resp Ex 14

KUC 600 (8-62) UNEMPLOYMENT INSURANCE APPLICATION
KANSAS STATE LABOR DEPARTMENT EMPLOYMENT SECURITY DIVISION 30-0000—0-000 7500 8670

NATIONAL LABOR RELATIONS BOARD
Case No. 17-CA-3021; 17-CA-3021-2
Resp. OFFICIAL EXHIBIT NO. 14
Disposition: Identified / Received / Rejected
George A. Angle, Atty for
Kansas Refined Helium Company
1/9/67 Witness Sims Reporter DAM
No. Pages 1

RESPONDENT'S EXHIBIT NO. 15

State Of Kansas
County Of Barton

I, Arel L. Rodgers make the following statement to an agent of the National Labor Relations Board. I live at Otis, Kansas, Box 319, telephone no. is 387-2343. I worked for Kansas Refined Helium Company from July of 1965 until September 20, 1966 when George Angle terminated myself and five other employees. At the time of my discharge I was drawing from $3.10 to $3.26 per hour as a utility operator.

I received a Union card from Mr. Hager Patton at a meeting called by him at the Holiday Inn in Great Bend, Kansas probably early June of this year. I read the card, signed it and returned it to Patton.

I talked to Henry Tyler and to Buddy Owens well before the Union ever came in and tried to tell them what I thought was needed to make this a really good job for all the men. Owens in particular simply told me to go on about my work, that he was running that end of the business. He told me to pay attention to my own business and to be quiet. I didn't go to the steak dinner that Angle held after the N. L. R. B. hearing.

When I returned from that hearing, Henry Tyler called me in and told me that the job I held there was supervisory. I had never been told this before. I did recognize that as a senior operator we were expected to direct the other men with respect to adjusting the flow of materials through the plant, but I never had the authority to hire or fire anyone or to discipline anyone. I recall that soon after Messer left, Henry Tyler called the senior operators in and told them that they had considered giving us these authorities but had decided against it. He said that we were to call him (at home) and that he would handle it.

I have prepared a 1 page typewritten statement relative to my interview with George Angle on September 13, 1966, which is made a part of this statement. During this interview, Angle asked me several times if I thought or believed that he would fire me. I told Angle I believed that that was his prerogative but that I had some doubts about his abilities to carry out all of the things he said he would do. I was the last man in the room on Sept. 20th when Angle fired us. He asked if we were all there. We asserted and Angle said, "Good, here's your letter, I don't like long goodbyes. I turned to go and Angle shouted" Rodgers come back here, I'm not through with you. I turned back and he said, "Now I want you to get your things and get out of here." I left and later as I went back by I saw Ross Simms still talking to him.

I understood that after we left, the senior operators were raised to $4.00 per hour and junior operators were raised to $3.20 per hour.

I later saw Henry Tyler and told him that I intended to come back to work there, referring to the Union's demand for reinstatement Tyler said that George would never let me back in the plant. He'll make you stay out at the fence.

I have read the above statement and swear that it is true to the best of my knowledge and belief.

Sworn before me this 29th day of September 1966

/s/ William V. Johnson
N. L. R. B.

Interview of Arel L. Rodgers by George A. Angle 9:30 p. m. 9/13/66

Mr. Angle called me in and said he wanted me to know that I was being interviewed for my job, that this interview would determine whether I would work for him or not.

He wanted to know if I remembered when I came to his office for a job? I told him yes. He said he couldn't as he had too many things on his mind.

He wanted to know if I had received or read a letter that the OCAW had sent out? I told him no, but that I was aware of the information therein. He said that this was sure a fine bunch that I was dealing with, not to send me a letter as important as this. When I had stuck my neck out for them by appearing as a witness for them. He then told me that he thought I was a dope in this matter. That I didn't understand about the union. That everyone would be under the union whether they wanted it or not. I told him they didn't have to join if they didn't care to but he said that was all I knew about it. That all the people in the plant would have to abide by these rules. I told him that when he had decided to construct the plant that he had drawn up a contract to protect himself from American Messer, the construction company, also that when I was in the service that I hadn't run around and had a little money. Usually there were those who would ask me to borrow $10 or $15 until payday. I told them yes, but I would like for them to sign a note. They would say no, we are friends. I told them that if they were friends, they wouldn't mind signing because they didn't intend to beat me out of it, but if they were not friends that I would have some protection. That I thought this was the reason for the union.

He said that the union would destroy all that he had built the past years and that it was jeopartizing the security of his family and that he would never let anyone do that ever. He would never let it go through. The Union was running scared of George A. Angle.

That George A. Angle had never set out to do anything he hadn't done. That no one could tell George A. Angle what to do or how to run his business and they never would. He said that there will not be enough people left when the union has an election to win because he would fire them. He said all the senior operators were union agitators. But there would never be a union in his plant or business. He said if we knew all the things he had gone through and the debts that he had it would bring tears to our eyes. To emphasize these statements he would kick the chair, hit the table, shake his fist and holler. He said that a union wouldn't do us any good anyway as he would never bargain with them in 3000 years.

I tried to tell him that we were trying to get a stated policy as to sick leave, etc. That the men should be given these things. He said he would never write down anything for anyone as this was an affront to his integrity. That no one could tell him what to do or how to handle his men, as he had been handling men for years and part of that time as Commanding Officer in the Air Force. Everyone either follows George A. Angle or they will be fired.

9/29/66

/s/ Arel L. Rodgers

RESPONDENT'S EXHIBIT NO. 16

MEMORANDUM... KANSAS REFINED HELIUM
Otis, Kansas

To: All Operations Personnel...

From: Henry Tyler....

Subject: Schedule and Shift Change..

Attached is the schedule through March, 1966..

Jim Ham has been promoted to Senior Operator to run the fourth shift...

This is a permanent arrangement. In order to get to the proper place in the schedule the following people shall come in as listed below:

Harris, Pickerill, Stalhman.. take off after present shift on Friday..and return Monday for a continuous 8--4 shift..5 or 6 days a week. Ham..Continue working 12-8 through Sunday... Take off Monday, Tuesday and come back 4-12 Wednesday.
Ross..Continue working 8-12 with Rogers..
Garrett: Take off Thursday.... come back Friday 12-8 with Sims.
Weinman..Continue 8-4 .. take Sunday off and come back on Monday on 4--12 with Hams... Others continue on 4-12 shift with Ham.

February 2, 1966

/s/ Henry Tyler

RESPONDENT'S EXHIBIT NO. 18

NOTICE . . . . . .

Beginning next work week. . February 7, 1966, . . each Supervisor will approve employees time cards. . . . Senior Operators will approve employees under their supervision. . . .

/s/ W. E. Owens
Plant Supt.

February 5, 1966

Control Room BB
H. Tyler
J. Stiff

RESPONDENT'S EXHIBIT NO. 19

KANSAS REFINED HELIUM COMPANY

TO ALL KANSAS REFINED PERSONNEL Jan. 5, 1966

The objective of all personnel regardless of which of the three companies involved is to get the plant started up and running proper.

1. Air Reduction is contributing whatever services they can to achieve this goal.

2. American Messer has the startup responsibility and will direct the operating personnel in startup and operations of the plant.

3. The Kansas Refined Helium Senior Operations Operator is responsible for his shift and should make all effort to become completely qualified in the operation of the plant. In the near future he will have the full responsibility of plant operation during his shift.

4. All other operating and supervisory personnel shall

make every effort to achieve the prime ofjective of proper and efficient operation of the Plant.

/s/ E. R. Wilson
Works Mgr.

RESPONDENT'S EXHIBIT NO. 20

October 4, 1965

Memo to AMC Start-up Personnel and KRH Senior Operators

Subject: Work to be accomplished

1. The following items will be accomplished during the present period prior to deriming and cool-down:

   A. Check all valves in vicinity of damaged vessel DR-402-B for condition of seats, gasket, etc. List all parts damaged.

   B. Pressure test propane system (coldbox).

   C. Pressure test ethylene system (coldbox).

   D. Pressure test methane system (coldbox).

   E. Pressure test feed gas system (coldbox).

   F. Pressure test nitrogen system (coldbox).

   G. Pressure test helium system (coldbox).

2. The above will be accomplished with KRH operating personnel. The senior operator will be informed and supervise the personnel on his shift. AMC will direct procedures.

3. When the KRH operating personnel are not required to accomplish above items, they will be released to John Stiff for maintenance items.

ERW:ub

E. R. Wilson

RESPONDENT'S EXHIBIT NO. 21

KANSAS REFINED HELIUM COMPANY
Otis, Kansas

Memo:

To: All Senior Operators..Henry Tyler and John Stiff
From: W. E. Buddy Owens, Plant Mgr.
Subject: SAFETY....

We need to go all out for Safety..Practice, preach and instruct. We have some new literature on Safety..Also we have some "Supervisor's Investigation Reports" in event of an accident (lets try to keep this to 0) fill out one of these.

Any unsafe conditions you or your employees see..report same and we'll try and fix it. If you need any help on safety..yell.

Your usual cooperation in this matter is expected and appreciated.

/s/ W. E. Buddy Owens
Plant Manager

Dated February 14, 1966

RESPONDENT'S EXHIBIT NO. 22

KANSAS REFINED HELIUM COMPANY

Otis, Kansas

March 6, 1966...

TO KANSAS REFINED HELIUM CO. PERSONNEL.....

From: W. E. Owens..

SUBJECT:.... PLANT STARTUP....

Soon we will be starting up the plant again. Then there are a few things you should all concentrate on during and after start up.

Safety to personnel and equipment is paramount. Do not sacrifice safety for any reason...

To aid in giving the plant a chance..all after coolers on engines shall be blown at least once per shift and each time an engine is put on line. There are also some drains in low places in front of Burgess Manning filters that shall be blown also. Do not add any water make up to MEA skid other than condensate.

Be on the look-out at all times for leaks..Report and repair same if possible.

During start up flare all gas until Henry Tyler or myself says OK to go into Northern Natural Lines. Then anytime B. T. U. drops to 950 call Northern Natural and by pass to flare.

These instructions are additions to the ones in "Blue" book. The Senior operator shall follow up these instructions and see that his employees take care of this. Any suggestions for improvement is solicited and appreciated.

/s/ W. E. Buddy Owens
Plant Manager

March 6, 1966

RESPONDENT'S EXHIBIT NO. 23

KANSAS REFINED HELIUM COMPANY
Otis, Kansas

MEMO....

TO: ALL AMC start up personnel and All Senior Operators of KRH....

The Instrument men are going on a two shift day... one shift from 10:00 AM in morning until 6:00 PM in evening.. The other shift from 9:00 PM to 5:00 AM, seven days a week.

In the event there is a need for instrument work during the periods not covered... Call either Bill at 387-2524, or Dwayne at SW 2-4095.

/s/ Henry Tyler
Plant Eng.

April 25, 1966

RESPONDENT'S EXHIBIT NO. 26

Summary of Great Plains Drlg. Man Hours for 1965, 1966, 1967 to Date

	1965	1966	1967
Total Man Hours	7031	8313	8354
Hours Worked For:			
Red Tiger Drlg.	867	793	1447
Great Plains Maintenance	134	112	306
Misc. Lease Work	790	420	98
Kans. Refined Helium Pipeline	296	30	—
Kans. Refined Helium General	210	798	1596
Great Plains Wells Drilled	4734	6160	4907
Totals	7031	8313	8354

NATIONAL LABOR RELATIONS BOARD
Docket No. 17-CA-3021 et al
OFFICIAL EXHIBIT No. R-26
Disposition: Identified / Received / Rejected
In the matter of Rio Grande Steel
Date 2/16/68 Witness Wesley Reporter Rio Grande

RESPONDENT'S EXHIBIT NO. 27

SUMMARY OF RED TIGER TRUCK MAN HOURS FOR 1965, 1966 AND 1967 to DATE

RED TIGER TRUCKS

THRU-7-22

	1965	1966	1967	TOTAL
TOTAL MAN HOURS	26667½	27811	19006½	73485
RED TIGER TRUCKS				
DRIVERS HOURS	10302	9304	6508½	26114½
MISC TRUCK HOURS	2388½	2617	2493½	7499
RED TIGER DRILLING	8041	9170	5592	22803
GREAT PLAINS DRILLING	532	880½	622½	2035
RED TIGER CAT	2219	1922½	1739½	5881
KRH HOURS	1427½	231	322	1980½
MISCELLANEOUS LEASE HRS	348	880	275½	1503½
100% LEASE HOURS	871	2176½	844½	3892
LEASES & COMPANIES BILLED	508½	629½	376	1514
RED TIGER GRADER	20	—	232½	262½
	26667½	27811	19006½	73485

NATIONAL LABOR RELATIONS BOARD
Docket No. 17-CA-3021-2 OFFICIAL EXHIBIT NO. R-27

Disposition: Identified ____ Received ✓ Rejected ____

In the matter of Glen A. Angle et al
Date 8/10/67 Witness M. Cotton Reporter K. Argie
No. Pages

RESPONDENT'S EXHIBIT NO. 28

Hawaii Tank Service
Payroll Hours
1-1-65 thru 6-30-67

	1965	1966	1967 (six months)
John Nawa	1052 1/2	1094	629 9
Hawaii	285 2	354 2	192 3/4
Red Jacket Drilling Company	761 4 1/2	728 5	433 8 3/4
Hawaii Refined Helium	47 1/2	85 3/4	28 1/2
Outside Companies	7 1/2	27 1/2	8
	1052 1/2	1094 1	629 9

NATIONAL LABOR RELATIONS BOARD
17-CA-3024
Docket No. 1021-2 OFFICIAL EXHIBIT NO. R-28

Disposition: Identified ____ Received ✓ Rejected ____

In the matter of Hawaiian Dredging Co.
Case 17-CA-3024 Witness Lorna Reporter M. Argo
No. Pages

Alvin Fred Pesicka
ADDRESS Natoma, Kansas
S. SO. 503-14-8680
DEPT. Road Gang No. 11 - Pipeline
NO. OF EXEMPTS 4

RATES: DATE 8-1 — RATE 2.60 — $100.00 per

FIELD EARNINGS — FIELD DEDUCTIONS: 12.61

NAME	RATE	PERIOD ENDING	REG. HRS. (✓ if SALARY)	O.T. HRS.	EARNINGS: REGULAR	OVERTIME	OTHER	GROSS	W.H. TAX	F.I.C.A.	DEDUCTIONS: GROUP INS.				TOTAL DEDUCTED	NET PAY	CHECK NO.	CUMULATIVE EARNINGS	
FORWARD										171.00								5157	10
ALVIN F. PESICKA	2.60	7-10	80	66	208.00	257.40		465.40	50.96		12.61				63.57	402.03	64604	5622	50
ALVIN F. PESICKA	2.60	7-12	112		291.20		VACATION PAY	291.20	26.90						26.90	264.30	64607	5913	70
ALVIN F. PESICKA	2.60	7-24	80	66	208.00	257.40		465.40	50.96						50.96	414.64	64689	6379	10
ALVIN F. PESICKA	2.60	8-9	40	20	104.00	78.00		182.00	11.10		12.61				23.71	158.29	64955	6561	10
ALVIN F. PESICKA		8-15			400.00			400.00	41.80						41.80	358.20	6629	6961	10
ALVIN F. PESICKA		8-31			400.00			400.00	41.80						41.80	358.20	66676	7361	10
ALVIN F. PESICKA		9-15			400.00			400.00	41.80		12.61				54.41	345.59	66816	7761	10
ALVIN F. PESICKA		9-30			400.00			400.00	41.80						41.80	358.20	66882	8161	10
					2411.20	592.80		3004.00	336.72		37.83				374.55	2629.45			
ALVIN F. PESICKA		10-15			400.00			400.00	41.80		12.61				54.41	345.59	66945	8561	10
ALVIN F. PESICKA		10-31			400.00			400.00	41.80						41.80	358.20	67005	8961	10
ALVIN F. PESICKA		11-15			400.00			400.00	41.80		12.61				54.41	345.59	67061	9361	10
ALVIN F. PESICKA		11-30			400.00			400.00	41.80						41.80	358.20	67117	9761	10
ALVIN F. PESICKA		12-15			400.00			400.00	41.80		12.61				54.41	345.59	67176	10161	10
ALVIN F. PESICKA		12-31			400.00			400.00	41.80						41.80	358.20	67234	10561	10
					2400.00			2400.00	251.80		37.83				289.63	2110.37	TOTAL YEAR TO DATE	10561	10
					4515.20	592.80		5108.00	588.52	171.00	113.21				872.73	4235.27			

DATE TERMINATED — REASON FOR TERMINATION — REMARKS — SIGNATURE OF EMPLOYEE OR PAYROLL AGENT

1-53 PRINTED IN U.S.A.

STATE NATIONAL LABOR RELATIONS BOARD
17-CA-3027 ←
Docket No. 17-CA-3027 OFFICIAL EXHIBIT NO. R-29
Identified

RESPONDENT'S EXHIBIT NO. 29

490

NAME Alvin Fred Pesicka

ADDRESS National, Va.

S.S. NO. 503-14-8680

DEPT. WRH Pupils' Services H.M

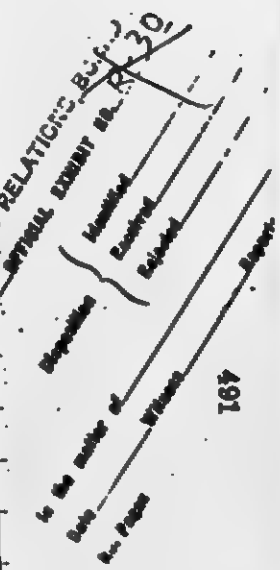
1966

NAME	DATE	PERIOD ENDING	REG. HRS.	O.T. HRS.	EARNINGS REGULAR	OVERTIME	OTHER	GROSS	W.H. TAX	F.I.C.A.	GROUP INS.	STATE TAX		TOTAL DEDUCTIONS	NET PAY	CHECK NO.	CUMULATIVE EARNINGS
FORWARD																	
ALVIN F. PESICKA		1-15			400.00			400.00	41.80	16.80	12.61	6.15		77.36	322.64	45381	400 00
ALVIN F. PESICKA		1-31			400.00			400.00	41.80	16.80		6.15		64.75	335.25	45445	800 00
ALVIN F. PESICKA		2-15			400.00			400.00	41.80	16.80	12.61	6.15		77.36	322.64	45509	1200 00
ALVIN F. PESICKA		2-28			400.00			400.00	41.80	16.80		6.15		64.75	335.25	45576	1600 00
ALVIN F. PESICKA		3-15			400.00			400.00	41.80	16.80	12.61	6.15		77.36	322.64	45641	2000 00
ALVIN F. PESICKA		3-31			400.00			400.00	41.80	16.80		6.15		64.75	335.25	45710	2400 00
					2400 00			2400 00	250.80	100.80	37.83	36.90		426.33	1973.67		
ALVIN F. PESICKA		4-15			400.00			400.00	41.80	16.80	12.61	6.15		77.36	322.64	45774	2800 00
ALVIN F. PESICKA		4-30			400.00			400.00	41.80	16.80		6.15		64.75	335.25	45838	3200 00
ALVIN F. PESICKA		5-15			400.00			400.00	44.50	16.80	12.51	6.75		80.56	319.44	45904	3600 00
ALVIN F. PESICKA		5-31			400.00			400.00	44.50	16.80		6.75		68.05	331.95	45967	4000 00
ALVIN F. PESICKA		6-15			400.00			400.00	44.50	16.80	12.51	6.75		80.56	319.44	46063	4400 00
ALVIN F. PESICKA		6-30			400.00			400.00	44.50	16.80		6.75		68.05	331.95	46153	4800 00
					2400 00			2400 00	261.60	100.80	37.83	39.30		439.33	1960.67	TOTAL	
					4800 00			4800 00	512.40	201.60	75.46	78.20		865.66	3934.34	YEAR TO DATE	4800 00

DATE EMPLOYED ____ DATE TERMINATED ____ REASON FOR TERMINATION ____

PHONE ____ PERSON TO NOTIFY IN EMERGENCY ____

HOUSE ____ Form N-333 PRINTED IN U.S.A. COMPENSATION RECORD



B

NAME Alvin Fred Pesicka

ADDRESS Natoma, Ks. Otis, Ks.

S. S. NO. 503-14-8680

DEPT. K&H Repairs NO. OF EXEMPTIONS H-M

1966

	DATE	RATE	FIXED EARNINGS						FIXED DEDUCTIONS					
OTHER		$ 100.00 per mo.												
	8-1	$ 900.00 per mo.							12.51					

NAME	RATE	PERIOD ENDING	REG. HRS.	O.T. HRS.	EARNINGS REGULAR	EARNINGS OVERTIME	EARNINGS OTHER	EARNINGS GROSS	DEDUCTIONS W.H. TAX	DEDUCTIONS F.I.C.A.	DEDUCTIONS GROUP INS.	DEDUCTIONS STATE	DEDUCTIONS	DEDUCTIONS	TOTAL DEDUCTED	NET PAY	CHECK NO.	CUMULATIVE EARNINGS	
FORWARD										201.60								4800.00	
ALVIN F. PESICKA		7-15			400.00			400.00	44.50	16.80	12.51	6.75			80.56	319.44	116228	5200.00	1
ALVIN F. PESICKA		7-31			400.00			400.00	44.50	16.80		6.75			68.05	331.95	116295	5600.00	2
ALVIN F. PESICKA		8-15			450.00			450.00	53.40	18.90	2.51	7.85			92.66	357.34	116388	6050.00	3
ALVIN F. PESICKA		8-31			450.00			450.00	51.30	18.90 +1.20		7.85			78.05	371.95	116467	6500.00	4
ALVIN F. PESICKA		9-15			450.00			450.00	51.30	4.20 to 1968	12.51	7.85			75.86	374.14	116536	6950.00	5
ALVIN F. PESICKA		9-30			450.00			450.00	51.30			7.85			59.15	390.85	116603	7400.00	6
					2600.00			2600.00	296.30	75.60	37.53	44.90			454.33	2145.67			7
ALVIN F. PESICKA		10-15			450.00			450.00	51.30		12.51	7.85			71.66	378.34	116670	7850.00	8
ALVIN F. PESICKA		10-31			450.00			450.00	51.30			7.85			59.15	390.85	116742	8300.00	9
ALVIN F. PESICKA		11-15			450.00			450.00	51.30		12.51	7.85			71.66	378.34	116810	8750.00	10
ALVIN F. PESICKA		11-30			450.00			450.00	51.30			7.85			59.15	390.85	116934	9200.00	11
ALVIN F. PESICKA		12-15			450.00			450.00	51.30		12.51	7.85			71.66	378.34	117033	9650.00	12
ALVIN F. PESICKA		12-14			50.00	CHRISMAS BONUS -		50.00							-0-	50.00	116471	9700.00	13
ALVIN F. PESICKA		12-31			450.00			450.00	51.30			7.85			59.15	390.85	117099	10150.00	14
																			15
																			16
					1850.00			1850.00	197.80		37.53	49.10			344.43	2255.67	TOTAL		
					10150.00			10150.00	1116.30	377.20	150.33	168.20			1711.83	9437.08	YEAR TO DATE	10150.00	

DATE EMPLOYED

DATE TERMINATED

REASON FOR TERMINATION

PHONE

PERSON TO NOTIFY IN EMERGENCY

Form W533 PRINTED IN U.S.A.

COMPENSATION RECORD

492

NAME Alvin Fred Pesicka

ADDRESS Aiea, Hi.

S. SEC. NO. 503-14-8680

DEPT. KRH Papeleu NO. OF EXEMPS M-M

1961

DATE	RATE	FIXED EARNINGS						FIXED DEDUCTIONS					
	$900 per mo.							15.11 - Class B					
								12.51					

NAME	RATE	PERIOD ENDING	REG. HRS. WORKED	O.T. HRS.	EARNINGS REGULAR	OVERTIME	OTHER	GROSS	DEDUCTIONS W.H. TAX	F.I.C.A.	GROUP INS.	STATE W.H. TAX			TOTAL DEDUCTED	NET PAY	CHECK NO.	CUMULATIVE EARNINGS	
FORWARD																			
ALVIN F. PESICKA		1-13			450.00			450.00	51.30	19.80	12.51	7.85			91.46	358.54	47177	450.00	
ALVIN F. PESICKA		1-13			450.00	- VACATION PAY		450.00	51.30	19.80		7.85			78.95	371.05	47180	900.00	
ALVIN F. PESICKA		1-31			450.00			450.00	51.30	19.80		7.85			78.95	371.05	47250	1350.00	
ALVIN F. PESICKA		2-15			450.00			450.00	51.30	19.80	12.51	7.85			91.46	358.54	47320	1800.00	
ALVIN F. PESICKA		2-28			450.00			450.00	51.30	19.80		7.85			78.95	371.05	47390	2250.00	
ALVIN F. PESICKA		3-15			450.00			450.00	51.30	19.80	12.51	7.85			91.46	358.54	47462	2700.00	
ALVIN F. PESICKA		3-31			450.00			450.00	51.30	19.80		7.85			78.95	371.05	47530	3150.00	
					3150.00			3150.00	359.10	138.60	37.53	54.95			590.18	2559.82			
ALVIN F. PESICKA		4-15			450.00			450.00	51.30	19.80	12.51	7.85			91.46	358.54	47600	3600.00	
ALVIN F. PESICKA		4-30			450.00			450.00	51.30	19.80		7.85			78.95	371.05	47670	4050.00	
ALVIN F. PESICKA		5-15			450.00			450.00	51.30	19.80	15.19	7.85			94.12	355.88	47738	4500.00	
ALVIN F. PESICKA		5-31			450.00			450.00	51.30	19.80		7.85			78.95	371.05	47838	4950.00	
ALVIN F. PESICKA		6-15			450.00			450.00	51.30	19.80	15.19	7.85			94.12	355.88	47962	5400.00	
ALVIN F. PESICKA		6-30			450.00			450.00	51.30	19.80		7.85			78.95	371.05	48014	5850.00	
					2700.00			2700.00	307.80	118.80	43.85	47.10			517.55	2182.45	TOTAL		
					5850.00			5850.00	666.90	257.40	80.38	101.05			1106.73	4743.27	YEAR TO DATE	5850.00	

DATE EMPLOYED

DATE TERMINATED

REASON FOR TERMINATION

PHONE

PERSON TO NOTIFY IN EMERGENCY

COMPENSATION RECORD

FORCE

Form 1513 PRINTED IN U.S.A.

B

NAME Alvin Floyd Pesicka

ADDRESS Otis, Ky.

S. S. NO. 503-14-8680

DEPT. KAN Pipeline NO. OF EXEMPTS 4-M

1967

15.17 Class 3

NAME	RATE	PERIOD ENDING	REG. HRS. WORKED	O.T. HRS.	EARNINGS: REGULAR	EARNINGS: OVERTIME	EARNINGS: OTHER	GROSS	DEDUCTIONS: W.H. TAX	DEDUCTIONS: F.I.C.A.	DEDUCTIONS: GROUP INS.	DEDUCTIONS: STATE W.H. TAX	DEDUCTIONS:	DEDUCTIONS:	TOTAL DEDUCTED	NET PAY	CHECK NO.	CUMULATIVE EARNINGS	
FORWARD										237.40								5850 00	
ALVIN F. PESICKA		7-15			450 00			450.00	51.30	19.80	15.17	5.25			91.52	358.48	48141	6300 00	1
ALVIN F. PESICKA		7-31			450 00			450 00	51 30	13.20 19.80		5.25			69.75 91.52	380.25 358.48	48266	6750 00	2
																			3
																			4
																			5
																			6
																			7
																			8
																			9
																			10
																			11
																			12
																			13
																			14
																			15
																			16
																TOTAL			
																YEAR TO DATE			

DATE EMPLOYED

DATE TERMINATED

REASON FOR TERMINATION

PHONE

PERSON TO NOTIFY IN EMERGENCY

COMPENSATION RECORD

Form 31533 PRINTED IN U.S.A.

494

B

NAME Altha A. Young

ADDRESS Natonia, Ky

SOC. SEC. NO. 512-07-0389

M. STAT. W.P. KRH NO. OF EXEMPTS 9-M

1966

	DATE	RATE	FIXED EARNINGS						FIXED DEDUCTIONS						
	4-24	2.15	10-24	12.40					12.51						

NAME	RATE	PERIOD ENDING	REG. HRS.	O.T. HRS.	EARNINGS REGULAR	EARNINGS OVERTIME	EARNINGS OTHER	GROSS	W.H. TAX	F.I.C.A.	DEDUCTIONS GROUP INS.	DEDUCTIONS STATE TAX	DEDUCTIONS	DEDUCTIONS	TOTAL DEDUCTED	NET PAY	CHECK NO.	CUMULATIVE EARNINGS		PERIOD
FORWARD										151.23								374348		
ALTHA A YOUNG	2.00	1-9	80	44	160.00	132.00		292.00	6.40	12.20	12.51	.95			32.12	259.88	U6168	403548		1
ALTHA A. YOUNG	2.00	1-23	80	74	160.00	222.00		382.00	20.60	16.04		3.15			39.79	342.21	U6231	441748		2
ALTHA A. YOUNG	2.15	8-6	10		21.50			21.50		.90	12.51				13.41	8.09	U6359	443898		3
ALTHA A. YOUNG	2.15	8-10	56		120.40	-VACATION PAY-		120.40		5.06					5.06	115.34	U6360	455938		4
ALTHA A YOUNG	2.15	8-6	30	30	64.50	96.75		161.25		6.77					6.77	154.48	0675	472063		5
ALTHA A. YOUNG	2.15	8-20	80	32	172.00	103.20		275.20	3.50	11.56		.50			15.56	259.64	6393	499583		6
ALTHA A. YOUNG	2.15	9-3	80	68	172.00	219.30		391.30	20.60	16.43	12.51	3.15			52.69	338.61	U6499	552763		7
ALTHA A. YOUNG	2.15	9-17	80	58	172.00	187.05		359.05	14.60	15.08		2.25			31.93	327.12	U6593	584618		8
					1042.40	960.30		2002.70	65.70	84.10	37.53	10.00			197.33	1805.37				9
ALTHA A. YOUNG	2.15	10-1	80	72	172.00	232.20		404.20	23.60	16.98	12.51	3.45			56.54	347.66	U6643	615038		10
ALTHA A. YOUNG	2.15	10-15	80	30	172.00	96.75		268.75	2.10	11.29		.35			13.74	255.01	U6713	641913		11
ALTHA A. YOUNG	2.80	10-23		8		33.60		33.60		1.41					1.41	32.19	0787	645273		12
ALTHA A. YOUNG	2.15	10-29	60	30	129.00	96.75		225.75	0	6.19	12.51				18.70	207.05	6758	667848		13
ALTHA A. YOUNG	2.80	11-6	60	40	168.00	168.00		336.00	11.60			1.65			13.25	322.75	0809	701448		14
ALTHA A. YOUNG	2.80	11-20	80	29	224.00	113.40		337.40	11.60			1.65			13.25	324.15	0831	735188		15
ALTHA A. YOUNG	2.80	12-11	80	31	216.40	130.20		346.60	17.60		12.51	2.55			32.66	313.94	0868	772548		16
																	TOTAL			
																	YEAR TO DATE			

DATE EMPLOYED — DATE TERMINATED — REASON FOR TERMINATION — PERSON TO NOTIFY IN EMERGENCY — PHONE

Form NS33 PRINTED IN U.S.A. — COMPENSATION RECORD

NATIONAL LABOR RELATIONS BOARD
RESPONDENT'S EXHIBIT NO. 30
Identified
Received
Rejected
Case No. 9-CA-3
Date 6/19/67
Reporter's Office

485

NAME

Altha A. Young

ADDRESS Natoma, Ks.

1966

S.S. NO. 512-07-0389

DEPT. KAN NO. OF EXEMPTS 9-M

DATE	RATE	FIXED EARNINGS						FIXED DEDUCTIONS					
	$2.80							1251					

NAME	RATE	PERIOD ENDING	REG. HRS. WORKED	O.T. HRS.	EARNINGS REGULAR	OVERTIME	OTHER	GROSS	W.H. TAX	DEDUCTIONS F.I.C.A.	GROUP INS.	STATE TAX		TOTAL DEDUCTED.	NET PAY	CHECK NO.	CUMULATIVE EARNINGS		
FORWARD										27720							772848		
ALTHA A. YOUNG	2.80	12.18	80	38½	224.00	61.70		385.70	20.60			3.15		23.75	361.95	0701	811118		1
ALTHA A. YOUNG		12-22			50.00	- XMAS Bonus -		50.00						-0-	50.00	1376	816418		2
																			3
																			4
																			5
																			6
																			7
																			8
																			9
																			10
																			11
																			12
																			13
																			14
																			15
																			16
					1385.40	1032.10		2418.00	87.10	35.81	37.53	12.80		173.30	2244.70	TOTAL			
					4451.10	3705.08		8104.18	288.20	271.20	112.79	43.25		715.44	7388.74	YEAR TO DATE	816418		

DATE EMPLOYED

DATE TERMINATED

REASON FOR TERMINATION

PHONE

PERSON TO NOTIFY IN EMERGENCY

Form 11533 PRINTED IN U.S.A.

COMPENSATION RECORD

496

NAME	RATE	CASINO CASHIER	CLUB HOUSE	MILES	MINS	RESOLVE	OVERTIME	OTHER	CROSS	W.H. TAX	F.I.C.A.	GROUP INS.	TOTAL DEDUCTIO	NET PAY	CHECK NO.	CUMULATIVE EARNINGS		
FORWARD																		
Alpha A Young	2.80	1.1	4 15	Hotel 1		24.40		.70	25.00	11.03	12.81			241.34	2324.36	C933	2.356.60	
Alpha A Young	2.80	1.15	80	22.40		2340.00			2149.10	18.88	21.00		14.08	3191.93	3791.17	C968	6.191.70	
Alpha A Young	2.80	1.49	80	22.40		3200.00			2485.10	10.81	12.81			2333.32	2223.38	1009	9235.40	
Alpha A Young	2.80	2.12	80	5 1/2		2340.00			2251.30	.70	11.06			1.76	237.54	1015	1176.10	
Alpha A Young	2.80	2.36	80	5 1/2		2340.00			2441.10		10.81			10.87	2336.23	1019	1423.80	
Alpha A Young	3.00	3.13	40	10 1/2		120.00			34.85	11.60	14.81	1.85		40.58	296.27	1113	1766.65	
Alpha A Young	3.00	3-26	80	13		2940.00			2982.50	6.40	13.43		.75	30.48	2718.05	1114	2051.15	
Alpha A Young	3.00	3-26		16		720.00					3.17				68.83	1154	2131.15	
	3.45					4621.45	401.25		4324.75	93.77	3453	1.45		101.35	1941.80			
Alpha A Young	3.60	4.9	80	48		22000	198.00		4600	23.60	12.39	12.51	3.48	576.85	3604.05	1190	2547.15	
Alpha A Young	3.45	4.33	80	12½		2100.00	DC006		4605.06	27.00	18.98		4.08	413.53	3702.53	1226	2761.21	
Alpha A Young	3.75	5.9	80	9.44		2940.00	198.50		4425.50	23.60	17.67	12.44	3.45		3444.64	1242	3570.91	
Alpha A Young	3.75	3.31	80	11½		2700.00	171.17		3711.17	20.70	17.21		3.18		3280.33	1279	3761.90	
Alpha A Young	3.75	6.4	80	10½		2520.00	171.25		3715.25	23.60	18.27	12.14	3.48		3371.17	1331	3477.15	
Alpha A Young	3.75	6.18	80	11		2700.00	181.50		3910.50	23.60	17.67		3.48		3351.19	1368	3459.65	
																TOTAL		
																YEAR TO DATE		

PHONE

REASON FOR TERMINATION

PLACE OF EMPLOYMENT

ADDRESS

CONFIDENTIAL RECORD

NAME

1961

Acme Manufacturing Co.

ADDRESS 512-01-0381

MAN HRS. REQUIRED 9.M

PAID - Check 1

PAYROLL DEDUCTIONS

GROSS EARNINGS

DATE 12.14

RATE 3.21

HRS 42.15

HRS 43.00

NAME

Altha A. Young

ADDRESS Natoma, Ks.

S. S. NO. 512-09-0389

DEPT. KRH NO. OF EXEMPTS 9-M

1969

8

DATE | RATE | FIXED EARNINGS | FIXED DEDUCTIONS

12.14 Class A

NAME	RATE	PERIOD ENDING	REG. HRS. (NORMAL WORKED)	O.T. HRS.	EARNINGS REGULAR	EARNINGS OVERTIME	EARNINGS OTHER	GROSS	W.H. TAX	F.I.C.A.	DEDUCTIONS GROUP INS.	DEDUCTIONS STATE TAX	DEDUCTIONS	DEDUCTIONS	TOTAL DEDUCTED	NET PAY	CHECK NO.	CUMULATIVE EARNINGS		
FORWARD										201.46								457165		
ALTHA A. YOUNG	2.75	7-2	80	42	220.00	173.25		393.25	20.60	17.30	12.14	2.10			52.14	341.11	1419	497190		1
ALTHA A YOUNG	2.75	7-16	88 Holiday 80	44	242.00	181.50		423.50	27.00	18.63		2.70			48.33	375.17	1450	539340		2
ALTHA A YOUNG	2.75	7-30	80	41	220.00	181.50		401.50	23.60	17.67	13.64	2.30			57.21	344.29	1496	579690		3
																				4
																				5
																				6
																				7
																				8
																				9
																				10
																				11
																				12
																				13
																				14
																				15
																				16
																TOTAL				
																YEAR TO DATE				

DATE EMPLOYED

DATE TERMINATED

REASON FOR TERMINATION

SPOUSE

PHONE

PERSON TO NOTIFY IN EMERGENCY

Form N533 PRINTED IN U.S.A.

COMPENSATION RECORD

498

NAME R. L. Mootz

ADDRESS Okla. Ok.

S.S. NO. 512-18-5622

CAT. KRII NO. OF EXEMPTS 1-M

1966

DATE 12-31

RATE $2.00

B

NAME	DATE	PERIOD ENDING	HOURS REGULAR	HOURS O.T.	EARNINGS REGULAR	EARNINGS OVERTIME	EARNINGS OTHER	GROSS	DEDUCTIONS W.H. TAX	DEDUCTIONS F.I.C.A.	DEDUCTIONS GROUP INS.	DEDUCTIONS OTHER	DEDUCTIONS	DEDUCTIONS	DEDUCTIONS	TOTAL DEDUCTED	NET PAY	CHECK NO.	CUMULATIVE EARNINGS	
FORWARD																				
R.L. MOOTZ	2.00	7-23	64	18	128.00	45.00		173.00	20.50	7.29		3.15				30.92	142.08	U C285	173	00
R.L. MOOTZ	2.00	7-31	38		76.00			76.00	6.00	3.19		.80				9.99	66.01	U0619	249	00
R.L. MOOTZ	2.00	8-14	75	21	150.00	63.00		213.00	29.10	8.95		4.05				40.10	172.90	0674	462	00
R.L. MOOTZ	2.00	8-28	80	26	160.00	78.00		238.00	30.50	10.00		4.65				45.15	192.85	0701	700	00
R.L MOOTZ	2.00	9-11	80	29 (5 holiday)	160.00	81.00		257.00	33.90	10.99		4.95				49.84	207.36	0129	957	00
R.L. MOOTZ	2.00	9-25	80	20	160.00	60.00		220.00	28.80	9.29		4.35				42.39	177.61	0446	1177	00
					250.00	321.00		1171.00	146.80	49.14		21.95				218.19	958.81			
R.L. MOOTZ	2.00	9-25		10		30.00		30.00		1.26						1.26	28.74	0748	1207	00
R.L. MOOTZ	2.00	10-9	80	25	160.00	75.00		235.00	30.50	9.87		4.65				45.02	189.98	0167	1442	00
R.L. MOOTZ	2.00	10-23	80	21	160.00	63.00		223.00	28.80	9.37		4.35				42.52	180.48	0786	1665	00
R.L. MOOTZ	2.00	11-6	80	18	160.00	54.00		214.00	27.10	8.99		4.05				40.14	173.86	0800	1879	00
R.L MOOTZ	2.00	11-20	80	22	160.00	66.00		226.00	28.80	9.49		4.35				42.64	183.36	0823	2105	00
R.L. MOOTZ	2.00	12-4	80	23	160.00	69.00		229.00	28.80	9.63		4.35				42.77	186.23	0858	2334	00
R.L. MOOTZ	2.00	12-18	80	33	160.00	99.00		259.00	33.90	10.58	12.51	4.95				28.34 (23.54)	230.66 (196.76)	0891	2593	00
R.L. MOOTZ		12-22			26.10	- XMAS BONUS -		26.10		1.10						1.10	25.00	1366	2619	10
					986.10	456.00		1442.10	177.90	60.58	12.51	26.90				277.89	1164.21	TOTAL		
					1236.1	1821.00		2617.10	324.90	110.03	12.51	49.65				495.89	2121.21	YEAR TO DATE	2619	10

DATE EMPLOYED 7-16-66

DATE TERMINATED

REASON FOR TERMINATION

ADDRESS

PHONE

PERSON TO NOTIFY IN EMERGENCY

CONSERVATION RECORD

PRINTED IN U.S.A.

NATIONAL LABOR RELATIONS B.O.R.
17-CA-3021-2 OFFICIAL EXHIBIT No. R-31

RESPONDENT'S EXHIBIT NO. 31

NATIONAL LABOR RELATIONS BOARD
In the matter of Textile Workers Union of America
Case No. 30-CA-302 Official Exhibit No. 31
Identified
Received
Rejected

NAME R. L. Moots
ADDRESS Otis Hansel
S. S. NO. 512-18-5682
DEPT. KRH NO. OF DEPENDS 1-M

1967

NAME	RATE	PERIOD ENDING	REG. HRS.	O.T. HRS.	EARNINGS REGULAR	EARNINGS OVERTIME	EARNINGS OTHER	GROSS	W.H. TAX	F.I.C.A.	GROUP INS.	STATE TAX			TOTAL DEDUCTIONS	NET PAY	CHECK NO.	CUMULATIVE EARNINGS
FORWARD																		
R.L. MOOTZ	2.00	1-1	88	34	116.00	102.00		218.00	37.30	12.23	12.51	5.55			67.59	210.41	C.910	218 CC
R.L. MOOTZ	2.00	1-15	80	10	160.00	120.00		280.00	39.00	12.32		5.85			57.17	222.83	C.976	538 CO
R.L. MOOTZ	2.00	1-29	80	17	160.00	51.00		211.00	27.10	9.28	12.51	4.05			52.94	158.06	0999	769 CO
R.L. MOOTZ	2.00	2-12	80	18	160.00	54.00		214.00	27.10	9.42		4.05			40.57	173.43	1035	983 00
R.L. MOOTZ	2.00	2-26	80	20	160.00	60.00		220.00	28.80	9.68		4.35			42.83	177.17	1069	1203 CC
R.L. MOOTZ	2.00	3-12	80	17	160.00	51.00		211.00	27.10	9.28	12.51	4.05			52.94	158.06	1119	1414 CC
R.L. MOOTZ	2.00	3-26	80	16	160.00	48.00		208.00	25.40	9.15		3.75			38.30	169.70	1138	1622 CC
					1436.00	486.00		1622.00	241.80	71.36	37.53	31.65			352.34	1269.66		
R.L. MOOTZ	2.00	4-9	80	17	160.00	51.00		211.00	27.10	9.28	12.51	4.05			52.94	158.06	1189	1833 00
R.L. MOOTZ	2.00	4-23	80	18	160.00	54.00		214.00	27.10	9.42		4.05			40.57	173.43	1229	2047 CO
R.L. MOOTZ	2.00	5-7	80	16	160.00	48.00		208.00	25.40	9.15	12.14	3.75			50.44	157.56	1263	2255 00
R.L. MOOTZ	2.00	5-21	80	19	160.00	57.00		217.00	27.10	9.55		4.05			40.70	176.30	1283	2472 CC
R.L. MOOTZ	2.00	6-4	88	17	176.00	51.00		227.00	28.80	9.99	12.14	4.35			55.28	171.72	1321	2699 CC
R.L. MOOTZ	2.00	6-18	80	16	160.00	48.00		208.00	25.40	9.15		3.75			38.30	169.70	1358	2907.00
					496.00	309.00		1295.00	160.90	56.54	36.77	24.00			278.23	1016.77	TOTAL	
					2132.00	795.00		2917.00	342.70	127.90	74.30	55.65			630.57	2286.43	YEAR TO DATE	

DATE EMPLOYED
DATE TERMINATED
REASON FOR TERMINATION
SPOUSE
PHONE
PERSON TO NOTIFY IN EMERGENCY

Form N533 PRINTED IN U.S.A.

COMPENSATION RE

509

NAME R. L. Mootz

ADDRESS Ochi, Ky.

S. S. NO. 512-18-5682

DEPT. K&H NO. OF EXEMPTS 1-4

1964

DATE RATE FIELD EARNINGS

$2.00 W.W.

FIELD DEDUCTIONS 13.64 12.14 (Union)

NAME	RATE	PERIOD ENDING	REGULAR HOURS	O.T. HRS.	EARNINGS REGULAR	EARNINGS OVERTIME	EARNINGS OTHER	GROSS	W.H. TAX	F.I.C.A.	GROUP INS.	DEDUCTIONS STATE TAX			TOTAL DEDUCTED	NET PAY	CHECK NO.	CUMULATIVE EARNINGS
FORWARD										129.90								2907.00
R. L. MOOTZ	2.00	7-2	80	16	160.00	48.00		208.00	25.40	9.16	12.14	2.50			49.19	158.81	1418	3115.00
R. L. MOOTZ	2.00	7-16	80	16 (8 Monday)	176.00	48.00		224.00	28.80	9.86		2.90			41.56	182.44	1440	3339.00
R. L. MOOTZ	2.00	7-30	80	16	160.00	48.00		208.00	25.40	9.15	13.64	2.50			50.69	157.31	1487	3547.00
																	TOTAL	
																	YEAR TO DATE	

DATE EMPLOYED

DATE TERMINATED

REASON FOR TERMINATION

SPOUSE

PHONE

PERSON TO NOTIFY IN EMERGENCY

© EMPLOYERS CORPORATION 1960 COMPANY OF L. Shreveport, La. — (Form H53) PRINTED IN U.S.A.

COMPENSATION RE

501

RESPONDENT'S EXHIBIT NO. 32

1965 DAYS WORKED
BY FUMER SNYDER AND A. L. YOUNG
FOR KANSAS REFINED HELIUM

A. L. YOUNG		LEO BAUM	FUMER SNYDER	
6-26-65	KRH PIPELINE	STARTED FIRST	1-24-65	KRH PIPELINE
7-2-65	KRH PLANT	EMPLOYMENT	3-23-65	✓
9-1-65	✓	ANGLE COMPANIES	3-26-65	✓
9-2-65	✓	SEPT. 17, 1966	3-29-65	✓
9-3-65	✓		3-30-65	✓
9-21-65	✓		4-30-65	✓
9-22-65	✓		5-1-65	✓
9-23-65	✓		5-4-65	✓
9-24-65	✓		5-8-65	KRH PLANT
9-25-65	✓		5-9-65	✓
10-6-65	✓		5-10-65	✓
(PRESENT EMPLOYMENT BEGAN 6-26-65)			5-12-65	✓
			5-16-65	KRH PIPELINE
			5-20-65	KRH PLANT
			5-23-65	✓
			5-27-65	KRH PIPELINE
			5-28-65	KRH PLANT
			5-29-65	✓
			5-31-65	✓
			6-2-65	✓
			6-26-65	KRH PIPELINE
			8-24-65	KRH PLANT
			9-1-65	✓
			9-2-65	✓
			9-3-65	✓
			9-21-65	✓
			9-22-65	✓
			9-23-65	✓
			9-21-65	✓
			9-25-65	✓
			10-6-65	✓

NATIONAL LABOR RELATIONS BOARD
17-CA-3021
Case No. 202-2 OFFICIAL EXHIBIT No. R-32
Disposition: Identified / Received / Rejected
In the matter of
Date
No. Pages

KANSAS REFINED HELIUM COMPANY

EMPLOYEE'S WORK RECORD

POSITION _____ WEEK ENDING 7-30 1966

DAY	TIME START	LUNCH FROM	LUNCH TO	TIME STOP	REG. HOURS	O.T. HOURS	REMARKS
MON.	8:30	12	1	6:30	9		working on house
TUES.	8:30	12	1	8:30	11		mowing
WED.							
THURS.							
FRI.	8:00	12	1	6:00	9		Lifting on line
SAT.	8:00	12	1	6:00	9		" "
SUN.							
TOTAL HOURS					38		

R R Mack
EMPLOYEE'S SIGNATURE

A L Rebecka
APPROVED

RESPONDENT'S EXHIBIT NO. 33

NATIONAL LABOR RELATIONS BOARD
Case No. 27-30274
Official Exhibit No. 33
Disposition: Identified ____ Received ✓ Rejected ____
In the matter of Wm. A. Angle, et al
Witness ____ Reporter K. Arg
Pages

KANSAS REFINED HELIUM COMPANY

EMPLOYEE'S WORK RECORD

POSITION GASS WELLS WEEK ENDING 6-17 19 66

DAY	TIME START	LUNCH FROM	LUNCH TO	TIME STOP	REG. HOURS	O.T. HOURS	REMARKS
MON.	8:00	12	1	5:00	8		
TUES.	8:00	12	1	6:00	9		
WED.	8:00	12	1	5:00	9		
THURS.	8:00	12	1	5:00	8		
FRI.	8:00	12	1	6:00	6	3	
SAT.	8:00	12	1	6:00		9	
SUN.	8:00	12	1	6:00		9	
				TOTAL HOURS	40.	21	

P K Knott
EMPLOYEE'S SIGNATURE

A L Reinke
APPROVED

RESPONDENT'S EXHIBIT NO. 34

504

NATIONAL LABOR RELATIONS B
Docket No. 17-CA-3021+3021-2 OFFICIAL EXHIBIT NO. 31

Disposition: Identified ___ Received ✓ Rejected ___

In the matter of Ellis A. Gragg, Inc.
Date 5/19/67 Witness ___ Reporter K Argo
Co. Pages

MEDICAL OFFICE

SUITE A . 925 BUILDING

925 NORTH EMPORIA AVENUE
WICHITA, KANSAS 67214

July 31, 1968

Mr. Robert N. Partride
Attorney at Law
Foulston, Siefkin, Powers, Smith & Eberhardt
Suite 600 Fourth National Bank Building
Wichita, Kansas 67202

Re: Thomas B. Garrett

Dear Mr. Partridge:

For your information and the records, I have the following to report regarding Mr. Garrett. He was originally seen in the office on 7-15-68. At that time, the following was done:

1. Mr. Garrett filled out the family, personal and social history sheet.

2. A Sentence Completion Test.

3. Mooney Problem Check List Test--a copy of his summary is attached.

4. Otis Quick Scoring IQ test.

5. Minnesota Multiphasic Personality Inventory.

6. Rorschach Personality Inventory.

7. Routine physical examination--essentially negative.

8. Routine neurological examination--essentially negative.

After all the above were completed, the following were reviewed:

1. Interview by Austin J. Adams, M. D., which were studied carefully.

2. Social History dated May 18, 1968, over the signature of Jean McElHaney, R. N.

3. Psychological test reports dated May 14, 1968, specifically the Wechsler-Bellevue, Rorschach, Bender-Gestalt and Figure Drawings, over the signature of John R. Lester, Ph. D.

4. The letter dated July 22, 1968, over the signature of Austin J. Adams, M. D.

Summary:

1. The psychological studies performed by John R. Lester, Ph. D., and those performed by the psychologist associated with me, Paul G. Murphy, Ph. D., are essentially the same.

2. My clinical impression of his diagnosis then is that Mr. Garrett is a schizophrenic personality and, undoubtedly, has been such throughout his entire lifetime. In this regard, Mr. Garrett informed me that he had been seen by Jose Garcia, M. D., in Victoria, Texas. I received permission to contact him and Dr. Garcia confirmed he had treated Mr. Garrett in 1963. He could not furnish me with the records because at that time he was employed by George A. Constant, M. D., who is a psychiatrist and known to me, whose address is 501 East Red River, Victoria, Texas, 77901. He advised me to write Dr. Constant, which I have done, requesting he semd me a discharge or case summary. I feel quite certain I will receive this report and I also feel quite certain that we will have relatively the same diagnosis, namely schizophrenic personality. It is, however, possible that the picture at that time might not have been as well developed, but knowing the professional caliber of these two men, I feel certain that they will concur in my diagnosis.

At the time he was interviewed in this office, his reality concept is outlined in Dr. Murphy's Rorschach summary, a copy of which is attached. He is still functioning at mid to high average IQ according to our intelligence test, which indicate that at one time he was from high average to superior intellectual capacity.

The definition of schizophrenia, as defined in medical textbooks, is a "chronic progressive deterioration of intellect." This personality will have periods when it can function to such a degree of normaley that an average person would be unaware of the illness with which the person is afflicted, as they have many mechanisms with which to hide their symptomatology. On the other hand, there will be periods of time when stress, environment and responsibility break down these defenses. When the defenses are thus disturbed, one with much less technical training can be readily aware that this person is not acting in a normal manner.

Comment: The above report, as it relates to your problem, is as follows:

1. At the present time, Mr. Garrett appears to be in a reasonable state of adjustment. This is probably due to the fact that his condition is in remission and that the medicine, which is being supplied, helps considerably to keep him adjusted.

2. To place him on a witness stand could certainly break down his adjustment mechanism, shatter his defense and might even precipitate a psychotic episode. I do not anticipate this picture will change much in time.

Therefore, if he is ever going to need to go on the witness stand, or a deposition be taken, I feel that he is currently in as good a condition of adjustment as one might anticipate in the foreseeable future.

Sincerely,

/s/ C. J. Kurth, M. D.

CJK:jf

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

WASHINGTON, D. C.

GEORGE A. ANGLE, doing business as
KANSAS REFINED HELIUM COMPANY,

Respondent

and

Cases 17--CA--3021
17--CA--3021--2

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNTIONAL UNION, AFL--CIO,

Charging Party

Gerald A. Wacknov, Esq., and
R. L. De Prospero, Esq., for the
General Counsel
Patrick F. Kelly, Esq., of Wichita,
Kans. (Frank and Kelly), for the
Charging Party.
Marvin J. Martin, Esq., and W. Stanley
Churchill, Esq., of Wichita, Kans.
(Martin & Wooley), for the Respondent.

TRIAL EXAMINER'S PRELIMINARY DECISION

SIDNEY D. GOLDBERG, Trial Examiner: In this consolidated proceeding under Section 10(b) of the National Labor Relations Act, as amended (herein called the Act), the complaint [1/] alleges that George A. Angle, in the operation of his enterprise under the name Kansas Refined Helium Company (herein sometimes called Respondent, KRH, or the Company), interfered with, restrained, and coerced employees in their exercise of rights guaranteed them in the Act; discriminatorily

1/ Issued November 16, 1966, on charges filed September 21 and 22, 1966, and an amended charge filed November 1, 1966. It was thereafter amended November 23, 1966, and at the hearing.

discharged six employees to discourage their membership in the Oil, Chemical and Atomic Workers International Union, AFL--CIO (herein called the Union), and, although the Union was the designated collective-bargaining representative of his employees in an appropriate unit, refused to bargain with it, thereby violating Section 8(a)(1), (3), and (5) of the Act.

Respondent answered, admitting that he had discharged the six named employees but denying that he had, in any manner, violated the Act.

A hearing on the issues so raised was held before me on January 18, 19, and 20, 1967, at Great Bend, Kansas, at which all parties were represented, afforded an opportunity to adduce evidence, cross-examine witnesses and argue upon the facts and the law. Briefs thereon were subsequently filed by the General Counsel and by Counsel for Respondent. Several posthearing motions were made by Respondent to reopen the record to take additional testimony. Except for the one hereafter described, these motions were denied.[2/]

On June 5, 1967, Respondent made a motion to dismiss the complaint herein, insofar as it alleges a refusal to bargain, on the ground that the Regional Director, by his order of May 31, 1967, vacating the Decision and Direction of Election in Case 17--RC--5126, had eliminated from this record all proof of the appropriateness, for collective-bargaining purposes, of the unit set forth in the complaint. The motion to dismiss was denied but the parties were given leave to apply for a reopening of the record herein to receive further evidence on this issue. Respondent moved to reopen the record and the General Counsel moved to incorporate into the record the transcript of testimony and the exhibits in Case 17--RC --5126. The motion to reopen the record was granted and a hearing on

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[2/] In connection with the denial of one of these motions, an exhibit theretofore marked for identification only was admitted into evidence for limited purposes.

the designated issue was held before me at Wichita, Kansas, on August 9, and 10, 1967, at which all parties were represented and afforded an opportunity to adduce further evidence on the designated issue, to cross-examine witnesses, and to argue on the facts and the law. The transcript of testimony and exhibits in the representation case were received in evidence as statements of the parties.

On August 10, the hearing was continued to permit the General Counsel to investigate the accuracy and completeness of documentary proof submitted by Respondent, and a date was set for the filing of briefs on the reopened issue. In view of this delay, and the fact that the record is complete on the allegations of interference with employees' rights and of discrimination against the six employees, it is my opinion that it would not serve the policies of the Act to withhold the issuance of a decision on these issues until the completion of all proceedings in connection with the allegations of refusal to bargain. Accordingly, in this Preliminary Decision I shall dispose of the indicated issues and I shall resolve the issues bearing on the refusal to bargain in a Supplemental Decision.[3/]

For the reasons hereinafter set forth in detail, I find that Respondent interfered with his employees' exercise of rights of self-organization and that his discharge of the six employees violated Section 8(a)(3) of the Act.

Upon the record in this proceeding,[4/] limited to the issues set forth above, and the demeanor of the witnesses, I make the following:

3/ While this procedure is not in strict conformity with the Board's Rules and Regulations, it has not been disapproved where its use was justified by the circumstances and was not prejudicial to the rights of any of the parties. (See Equitable Life Insurance Company, 133 NLRB 1675; Schimmel Hotel Company, 147 NLRB 1378).

4/ Respondent's motion to correct typographical errors in the transcript was not opposed and is hereby granted. Additional typographical errors are corrected as follows: on page 33, line 19: "consumed" is changed to "assumed"; on page 44, line 23: "3-E" is (Continued)

Findings of Fact

I. The Employer

Respondent is engaged, as sole proprietor, in several businesses under various descriptive trade names, all of them connected with the oil and gas industry.[5/] KRH, the enterprise involved in this proceeding, operates a plant at Otis, Kansas, where it extracts helium from natural gas by processes utilizing very low temperatures (cryogenics) and then markets the compressed helium and the other products separated in the extraction process. The answer admits that this enterprise annually sells helium valued at more than $50,000 to persons outside the State of Kansas and that it is an employer within the meaning of the Act. I so find.

II. The Labor Organization

Respondent admits, for the purpose of this proceeding, that the Union is a labor organization within the meaning of the Act.

III. The Unfair Labor Practices

A. Chronology and Issues

1. Background

In 1964, when Angle decided to embark upon the enterprise involved herein, he entered into contracts with the American Messer Corporation whereby that company undertook to conduct the plant and turn it over to him in operating condition. The testimony is undisputed that it is a modern plant and almost completely automatic in operation.

4/ (Continued) changed to "3--D"; on page 47, line 5: "3--F through 3--R" is changed to "3--D through 3--R"; on page 81, line 21: "received" is changed to "sent"; on page 210, line 14: "4--Q" is changed to "3--Q"; on page 267, line 25: "No. 15" is changed to "No. 14"; on page 321, line 22: "elocution" is changed to "circumlocution"; on page 336, line 3: "respect laws" is changed to "expect lawyers."

5/ Kansas Refined Helium Company, Red Tiger Drilling Company, Red Tiger Trucking Company, Red Tiger Caterpillar (Continued)

It occupies a substantial tract of land and consists of several buildings, storage tanks, and other structures, connected by pipelines and other necessary communication systems. The principal building contains offices and the main control room; other buildings shelter the compressors and other machinery.

The construction of the plant was completed about July 1, 1965, and, in accordance with its operating contract, American Messer began hiring the necessary personnel to man it for operation. Although Angle supplied the money for the payroll, all employees were hired, trained, and supervised by American Messer. After a delay caused by an accidental fire early in 1966, the plant began operating and was turned over to Angle in April of that year.

When the plant was turned over to Angle, its top supervisory staff consisted of the plant manager, "Buddy" Owens, the operations and engineering manager, Henry Tyler, and the chief of maintenance, John Stiff. The other plant personnel included "instrument men," who repaired and maintained the gauges and similar devices, some general maintenance employees, an electrician, a clerk, 4 "senior operators" and several "junior operators," totaling approximately 24 employees.

2. Chronology

a. Demand for Recognition and Refusal

About the middle of June 1966,[6/] one of the KRH employees got in touch with the Wichita office of the Union and Hager Patton, a representative was assigned to assist in the organizing effort. After making a preliminary survey and determining that there appeared to be sufficient interest, Patton and another union representative, C. L. Williams, held

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5/ (Continued) Company, Hayes Tank Service, Great Plains Drilling Company, Frontier Oil Company, and Comanche Supply Company.

6/ All dates hereafter, unless otherwise noted, are 1966.

a meeting at Great Bend on June 22, at which four KRH employees were present and signed cards designating the Union as their collective-bargaining representative.

Additional employees thereafter signed cards and, on June 29, the Union wrote a letter to KRH at Otis, marked for the attention of Plant Manager Owens, stating that it represented "a majority of the Production and Maintenance employees" at the plant and offering to meet for the purpose of negotiating a collective-bargaining agreement.

On the following day, June 30, the Union mailed an election petition to the Board's Regional Office at Kansas City, together with the cards of "30% or more of the employees in such plant," a list of the card signers and a copy of the letter to KRH requesting recognition. A copy of the letter to the Board and a copy of the petition were mailed to KRH.

Angle testified that he received both letters at his office in Wichita, in the same mail, on June 30 or July 1. Under date of July 6, he wrote a letter to the Union acknowledging receipt of both letters, stating that he did not believe the Union represented a majority "in the proper bargaining unit" and that he would handle the matter through a Board-conducted election.

On July 11, Angle wrote a 13-page letter to each employee of KRH. In this letter he reproduced a copy of the three-page letter he had written each employee as he was hired the previous July, and a three-page roster and length of service record of each of the employees in each of his enterprises. Again on July 27, Angle wrote a letter to each of his KRH employees, this time stating that he had received word that the Board "will hold a hearing soon to determine who is to vote in the election." In addition to assuring each employee that in the election he could vote as he pleased, regardless of whether he had signed a "union card," Angle urged all employees to vote and made several other statements discussed below. On July 29, Angle again wrote a letter to all KRH employees, enclosing an unsigned note which he had received commenting on his treatment of the plant employees.

b. The Repression Case

The Board hearing on the Union's election petition[7/] was held on August 9 at Wichita. Several questions were raised and explored: the principal one being whether the senior operators were supervisors within the meaning of the Act. Respondent took the position that they were supervisors and, therefore, should not be included in the unit: the Union disagreed. The Regional Director's decision, issued August 25, found: (i) that the unit requested by the Union, limited to the production and maintenance employees of KRH, was an appropriate one; (ii) that two of the employees were students and should be excluded as temporary employees; and (iii) that the senior operators were supervisors and, therefore, excluded from the unit by the Act.

The Union requested the Board to review that portion of the Regional Director's decision which held that the senior operators were supervisors. On September 9, while the application for review was pending, the election was set for September 28. On September 20 the Board, by telegraphic order, amended the Regional Director's decision: it stated that the status of the senior operators could be best resolved by the challenge procedure and directed that they be permitted to vote subject to challenge. Review of the Regional Director's decision was otherwise denied.

On September 21, the Regional Office notified the parties that, by reason of the filing of the charges in this proceeding, the election would not be held as scheduled on September 28 but would be indefinitely postponed pending the disposition of the charges or a request by the Union to proceed with the election.

On May 31, 1967, pursuant to the Union's request for leave to withdraw its petition, the Regional Director issued an order approving

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7/ Case 17--RC--5126.

the request and ordering that the Decision and Direction of Election be vacated; that the Decision and Direction of Election be vacated; that the notice of hearing be withdrawn; and that the proceeding be closed. Respondent thereupon moved that the complaint herein be dismissed with respect to the allegations of unlawful refusal to bargain, as set forth above, and the hearing was reopened on that issue.

c. The Alleged Interference and Illegal Discharge

On Monday morning, June 27, at his Wichita office, Angle received a two-page, typed, unsigned letter addressed to him and severely criticizing the operation of the KRH plant by the plant manager. The envelope shows that it was mailed from Otis during the forenoon of the previous Saturday, June 25. Other than calling Plant Manager Owens to Wichita and conferring with him, Angle did nothing about this letter.

As stated above, the Union's request for recognition was received by Respondent on June 30 or July 1, and his refusal followed on July 6. Also as stated, Angle sent letters to all his KRH employees under dates of July 11 and July 27. In the letter of July 27, Angle stated that he had "just...raised wages in all other divisions of the Company" but that he had been informed that unfair labor practice charges could be filed against him if, prior to the election, he either gave or promised wage increases to KRH employees. The Union promptly wrote a letter to Angle stating that it would not file charges based upon his grant of similar wage increases to KRH employees, then or at any time prior to the election, if "granted on an equitable and nondiscriminatory manner," and that it was sending a copy of its letter to the Board.

On July 28, Angle invited all of his KRH employees who were not on duty to a dinner at Great Bend and, after dinner, he made a speech. The following day he received a second anonymous letter, criticizing his speech at the dinner. Angle sent copies of this letter, with one of his own, to all employees and he had both letters posted on the bulletin

board at the plant. Shortly thereafter, the Union sent an answering letter to all employees on this subject.

Shortly after the Board hearing on August 9, Angle had a long telephone conversation with Russell Sims, one of the senior operators, on the so-called dissension in the plant. On August 17, according to Russell L. Bishop, one of the junior operators, Angle came to the plant and made several statements to him about the union and those involved in union activities. Bishop also testified that on a date near the end of that month, Norman Klein, comptroller for all of Angle's enterprises and general manager of the KRH plant, had a conversation with him at which conditions at the plant were discussed.

Shortly after the issuance of the Regional Director's decision on August 25, the Union wrote a letter to all of its KRH employee members, stating that an appeal would be taken to the Board from that part of the Regional Director's decision which held the senior operators to be supervisors and that this procedure might delay the holding of the election for a short time.

At the end of August, Angle received a third anonymous letter, mailed from Great Bend on the 29th, again criticizing the supervisory administration at the plant and accusing nine named employees of a willingness to do "anything" to curry favor.

Between September 13 and 16---Tuesday to Friday---and on Monday, September 19, Angle interviewed every employee at the plant. He told each one that, since practically all the hiring had been done by American Messer Corporation and, therefore, he had never had the opportunity to speak with the plant employees, he would treat these interviews as if they were "pre-hire" interviews. The interviews ran from half an hour to more than 2 hours, and Angle admittedly asked many questions concerning the employees' relationship to and activities on behalf of the Union.

On September 20, six employees: Dwayne Johnston, an instrument man; Russell M. Sims and Arel L. Rodgers, senior operators; and

Thomas B. Garrett, Russell L. Bishop, and John S. Harris, junior operators, were called to the office. When they arrived there, they found Angle: he said he didn't like "long goodbyes" and gave them identical letters of discharge.

On the following day, Respondent announced wage increases to all the remaining employees, effective September 26.

3. The issues

One of the principal issues in this case, prerequisite to the determination of several other issues, is the status--supervisory or non-supervisory--of the senior operators.

Other issues raised by the complaint and answer, and to be decided at this time, are whether Respondent unlawfully interfered with his employees' rights of self-organization and whether his discharge of the six employees constituted discrimination to discourage their membership in the Union.

In addition to these issues, the General Counsel, stating that Angle, by the discharges and other conduct, has not only flagrantly violated the Act but that he has also declared his purpose to continue to violate it, has requested that an unusual remedy be applied herein: that Respondent be required not only to make whole the discharged employees by paying them the amounts they would have earned but for their discharge, but that such payments be computed without the customary diminution for interim earnings.

Repondent, although contending that the discharges did not violate the Act, argues that, even if they should be held to constitute an unfair labor practice, nevertheless Sims and Johnston, by their improper conduct while still employed, and Garrett, by failing to testify in this proceeding, have made themselves unsuitable for further employment by Respondent and that their reinstatement should not be ordered.

B. Discussion and Findings

1. The status of the senior operators

Respondent has taken the position, at least since the hearing in the representation case, that the four senior operators are supervisors and, therefore, excluded by the Act from the unit of production and maintenance employees set forth by the Union in its petition and by the General Counsel in the complaint. The Union's contention has been that the senior operators are "workmen," like the others in the plant, and it urged the Board so to hold in its request for review of the Regional Director's decision that they were supervisors. By his issuance of the complaint herein, the General Counsel takes the same position as the Union on this point. 8/

Section 2(11) of the Act defines the term "supervisor" as:

> . . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The area of inquiry on this subject, in the light of the criteria set forth in the statute, is somewhat contracted by Respondent's frank statement, in his brief, that:

> No contention is made that the senior operators did actually suspend, lay-off, recall, promote, transfer or discharge . . . .

8/ When this proceeding was originally heard, the related representation proceeding was still pending. Although the Board's telegraphic order of September 20 therein directed that the status of the senior operators be determined through the "challenged ballot" procedure, the Regional Director's indefinite postponement of the election upon the filing of the first charge

other employees, but that:

> The question is whether or not the senior operators had the authority to adjust grievances, to assign, responsibly direct or effectively recommend, reward or transfer their subordinates.

It is, moreover, quite clear and undisputed that the resolution of this issue will be determined solely on the basis of the relationship of the senior operators to the junior operators.

Functions: The record shows that Respondent's plant, newly built by American Messer, a company specializing in the construction of gas refineries, is as completely automatic as present technical knowledge can make it. It appears that the functions performed by "operating" employees---senior and junior operators---are normally restricted to (i) observing gauges and other indicators to make certain that the process is following its assigned course; (ii) adjusting controls to compensate for deviations from that course; (iii) taking necessary steps to keep the machinery functioning; (iv) switching the course of the process from one system to another or substituting elements within the system, and (v) performing, as needed, certain duties peripheral to the process itself, such as filling the containers or tank trucks in which the compressed gas is to be transported.

All of the operators were chosen, and trained on the job, by American Messer; they were all given the same general course of instruction and then assigned to specific jobs as junior or senior operators. At least two of those designated as senior operators, Sims and Rodgers, had prior relevant experience with National Helium Company.

8/ (Continued) herein made it obvious that the indicated procedure could not be utilized. Accordingly, the parties herein were permitted to litigate this issue fully in this proceeding. The subsequent order, therefore, of the Regional Director, although it nullified the representation proceeding and each of its constituent parts, had no effect upon the record on this issue herein.

Each shift consists of one senior operator and two or three junior operators. The post of duty of the senior operator is at a large bank of indicators, called "the board," in the main control room in the principal building; the junior operators move about the plant area to cover the machines and controls in the outbuildings and on the pipelines between the various tanks and buildings. It was not unusual, however, for a junior operator to take the senior's place at the board for short intervals during a shift. One junior operator, Pittman, filled a senior's position for several weeks during vacation period and was subsequently promoted to senior operator. Two of the junior operators during the period involved herein were also promoted to senior operator positions when the two senior operators were discharged on September 20. In addition to taking previously prescribed actions when gauges and other indicators showed the need therefor, the operators had standing instructions, through a manual called the "blue book" to perform certain duties with respect to particular machines at some time on every shift. Additional instructions, involving the performance of tasks made necessary by unusual circumstances, were set down, by concededly supervisory personnel only, [9/] in a book called the "special orders book" which was consulted, by senior and junior operators alike, at the commencement of each shift and in which both seniors and juniors might find assignments to be performed by them during their tour of duty. At the end of the shift the senior operator usually took another look at this book to make certain that all assignments had been completed. If his inspection of the book and, possibly, of the mechanism, disclosed that an assignment to be performed by a junior operator had not been carried out, he would call that oversight to the attention of the operator who should have performed it.

The "special orders book" also contained directions concerning the preparation of containers for gas to be sold and the loading of trucks

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9/ W. E. Owens, Plant Manager; Henry Tyler, Plant Engineer; and John Stiff, Maintenance Manager.

of, or for, purchasers. In this aspect of the work, also, the senior and junior operators knew the functions they were expected to perform and it was only where a prescribed duty was neglected by a junior operator that the senior operator was required to call his attention to it.

Supervision: The three shifts at the plant are: midnight to 8 a.m.; 8 a.m. to 4 p.m.; and 4 p.m. to midnight. During the regular daytime hours; i.e., 8 a.m. to 4 p.m., Monday through Friday, the plant contains both the operating crew on that shift and the other plant employees: supervisory, maintenance, and clerical. From 4 p.m. each day until 8 the next morning, and during the entire weekend, the operating crew on those shifts are normally the only employees at the plant. Respondent contends that, because at these times---120 to 140 hours per week as against the 40 to 60 hours when other employees were present---"the physical control of the entire plant was in the hands of the senior operators," they must be considered supervisors.

The record shows, however, that Plant Manager Owens, Plant Engineer Tyler, and Maintenance Manager Stiff all reside in the vicinity; that if any unusual problem arises during the night or weekend the senior operator informs Tyler, who gives the necessary direction, sends down a maintenance man, or comes to the plant himself. The testimony shows that it was not unusual for Tyler or Owens to spend many hours at the plant during the nights and weekends, either because they elected to do so or because of the existence of operating problems or outside emergincies, such as storms. Moreover, the "special orders book" often carried information about problems believed imminent, together with either instructions for meeting them or listing the persons to be called upon for assistance. In the light of these factors, therefore, I do not consider the physical absence from the plant of supervisory personnel during nights and weekends to be dispositive of this issue.[10/]

10/ Compare: Colo. Well Service, Inc., 163 NLRB No. 101.

Discipline: Plant Engineer Tyler conceded that the senior operators had no authority to discipline junior operators. The definite formulation of this policy grew out of an incident, during the spring of 1966, involving Sims and a junior operator named Stahlman. The junior operator had refused to perform a task falling within the regular scope of the duties of a junior operator [11/] and Sims reported the matter to Tyler. After giving the matter some thought and consulting officials at both American Messer and Air Reduction Company, Tyler informed the senior operators that they had no disciplinary powers over the juniors and that, if a situation should arise involving the possible need for disciplinary action, they were to call him and he would take the necessary action. Tyler subsequently discharged Stahlman. [12/]

Recommendation of wage increases: Respondent contends that the senior operators had authority to "effectively recommend, reward . . . their subordinates." Tyler conceded that no senior operator had ever "rewarded" an employee but the record shows that, sometime in April, Sims heard a rumor that some of the employees would soon be given wage increases; that he went to Tyler and told him that, in his opinion, junior operators Garrett and Wakulich, who were on his shift, and Harris, who was not, were qualified employees who had performed well and deserved raises. Tyler said he would think it over. About a month later, Tyler told Sims that he was about to inform

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11/ Sims, testifying on 2 separate days, gave two versions of the dispute with Stahlman. The first was that the junior operators on his shift fell into disagreement as to which of them should take certain water samples; that he tried to solve the problem by suggesting that they perform the task in turn but that Stahlman refused. The following day, Sims testified that one of the plant supervisors had instructed him to have Stahlman clean some water out of a tank and that Stahlman refused. I find that this conflict is unimportant, since neither version contains probative evidence that even at that time Sims was exercising responsible direction of the junior operator's work, and I do not resolve it.

12/ Tyler testified that he had told Stahlman, after Sims had complained about him, that he was "working for" Sims and would do as Sims

those three juniors that they were to receive increases and asked Sims if he wanted to come with him. Sims said he did and, after Tyler told each of the men about the raise, Sims congratulated him. 13/

Respondent's records show that, of the 21 employees in the plant during May, the 3 mentioned by Sims received wage increases on May 9 and 10 others received increases on May 23. Of the eight who did not receive increases, four had commenced their employment in April or May. Respondent testified that, in interviews with employees, he pointed out to them that in the first 10 months of the plant's operation, they had been given two wage increases.

On the basis of the foregoing evidence, I find that, despite the slight time difference between the grant of increases to the three junior operators mentioned by Sims and the others in the plant, Sims' recommendation made no meaningful contribution to these wage increases but that they were part of the general pay raise. I also find that the senior operators did not have authority to make effective recommendations for wage increases.

12/ (Continued) directed or not work there. He also testified that, when he told the senior operators that they would not be given authority to discharge junior operators, he also told them that in such situations he would back them "to the full extent." There is no evidence that a similar situation ever arose. I find that Tyler's statement to Stahlman, in context, did not evidence a grant of supervisory authority to the senior operators and that his statement to the senior operators imported no more than a promise to investigate, since he was careful to say he would "come out immediately," and that the senior operator's recommendation would be given considerable weight. Accordingly, I do not find that the senior operators were given authority "effectively to recommend" discharge of other employees.

13/ There were three other senior operators in the plant. Ham testified that he never did anything about wage increases for the junior operators; Rodgers was not questioned on the subject; and Hams did not testify.

Pay differential: Respondent, pointing out that the senior operators were paid between 80 and 85 cents per hour more than the junior operators, [14] asserts that this must be due to either of two factors: (i) that the senior operators were highly skilled craftsmen and, therefore, able to command high wages, or (ii) that they were being compensated for the authority and responsibility inherent in their positions. Since the training of the senior and junior operators was the same, Respondent argues, the wage differential must be due to the supervisory authority inherent in these positions.

This argument is a melange of fallacies and omissions: as of the time when Respondent makes its comparison, all four senior operators had been at the plant since July 26, 1965, when American Messer first hired operating personnel. Of the 10 junior operators in Respondent's employ in June, however, only 3---Pickerill, Wakulich, and Harris---had been there since the beginning and Pickerill's wage rate of $3. 30 represented a gap of only 45 cents below that of senior operator Rodgers. Moreover, Pickerill was one of the two junior operators who became senior operators when the six employees, including Harris, were discharged on September 20 and Wakulich became a senior operator in December. As Respondent has so carefully pointed out, the plant probably represented, when completed, the furthest technical advance in construction and design for its purpose in the country and it was, if only momentarily, unique. It is, therefore, at least as reasonable to argue that it was the experience which they had acquired in the operation of this outstanding installation which made the senior operators, whose duties involved its nerve-center, sufficiently valuable to Respondent and attractive to others in the industry to justify Respondent's higher wage rates in an effort to keep

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14/ My independent analysis of the wages paid these employees during the month of June, shows that (with a single exception) this is a fair and conservative characterization of the differential.

them in his employ. The statement that the wage differential necessarily indicates that there was responsibility and supervisory authority in these positions is an ipse dixit which must be, and hereby is, rejected.

Timecard approval: On February 5, a notice was posted on the control room bulletin board stating:

> Beginning next work week . . . February 7, 1966 . . . each Supervisor will approve employees time cards . . . Senior Operators will approve employees under their supervision . . .

Sims testified that thereafter, on the timecard of each junior operator on his shift, he placed his initials on the line labeled "Approval of time" and then gave the cards to Tyler who, after also initialing them, turned them over to the office for payroll purposes. Tyler admitted that the cards were not valid until he had signed them. While the reference to employees under the "supervision" of the senior operators is purely conclusionary, the notice also appears to draw a distinction between the senior operators and "supervisors," since it refers separately to each. In any event, this function of timecard approval, without more, does not necessarily convert the senior operators into supervisors. 15/

Respondent's characterization: The terms in which an employer refers to a specific position are not, in themselves, determinative of the supervisory status of an employee under the Act, since an employer is free---for his own purposes and by the use of his own criteria---to use any terms or titles he may prefer. Accordingly, Respondent's references to the senior operators as "supervisors," or in other terms indicating authority, in the seven notices posted between October 1965 and April 1966, are not conclusive for the purpose of this proceeding

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15/ United States Gypsum Co., 118 NLRB 20, 26; compare: Western Saw Manufacturers, Inc., 155 NLRB 1323, 1329, footnote 11.

under the Act. As representations by the employer to the other employees, however, they are entitled to be given consideration, together with other factual evidence, in reaching a decision on this point.

The notices dated October 4, 1965, and January 5 do not relate to the ordinary operation of the plant but to its "start-up" period, and they show that both authority and responsibility are reserved to American Messer personnel. In both notices, moreover, the terms "supervise," "responsible," and variations thereof, as applied to the senior operators, are purely conclusionary and there is no factual recital of any of the functions of these employees. 16/

The descriptive statement, in the notice dated February 2, concerning Ham's promotion to senior operator, that he was "to run the fourth shift," and the reference to certain forms as "Supervisor's Investigation Reports" are both purely conclusionary and carry little weight, even as representations to the other employees.

Unlike the others, the notice of February 5 has a direct bearing on the question under consideration, since it not only directs the performance of a specific function by the senior operators, but the evidence shows that, in accordance with its directions, the senior operators did initial the timecards of the junior operators. To the extent that this function constitutes probative evidence, however, it has been already discussed and the use of the conclusionary phrase "under their supervision" in the notice adds nothing to its weight.

The notice dated April 25, which Respondent characterizes as a

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16/ The additional statement in the notice of January 5 that "In the near future he [the senior operator] will have the full responsibility of plant operation during his shift" is not only conclusionary but, in its reference to responsibility in the future, casts doubt on its existence at the time of the notice. The meaning of the notice is further confused by the fact that there is nothing in the record to justify an assumption that responsibility "for the shift" and responsibility for "plant operation" during the normal functioning of the plant, is the same as it was during the "start-up" period.

grant of authority to the senior operators to "call out" instrument men, simply lists the telephone numbers where two of them may be reached when no instrument man is on duty at the plant. I do not construe this information as a grant of authority to the senior operators over the instrument men.

The March 6 notice, posted when the plant was about to resume operation after the accidental fire which had shut it down, prescribes several safety rules and measures in addition to those normal for plant operation and direct the senior operators to "see that his employees take care of this." The functions of the junior and senior operators were fixed by the operating instructions in the "blue book" and in the procedures devised by American Messer. The prescription of additional precautionary measures in this notice merely adds to the fixed duties of both the senior and junior operators. The duty of the senior operators to see that the junior operators on their shift perform their assigned duties extends, to the same degree, to these additional safety precautions. It is to be noted, moreover, that the function of making the single "super" safety decision, that of switching "flare-gas" into the transmission lines, is reserved for Tyler or Owens.

Despite Respondent's liberal use of the terms under discussion, the senior operators themselves do not appear to have been under the impression that they were supervisors---even within their personal definitions of the term. Sims testified that he had never been told, until after the Board's representation case hearing, that he was a supervisor. Moreover, although he had a long telephone conversation with Angle a day or so after the hearing, Angle said nothing to him about his position being one carrying supervisory powers. [17] Ham, who testified for Respondent, also stated that he had never been told,

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17/ Angle admitted having had the telephone conversation with Sims and did not contradict this testimony.

prior to the representation case hearing, that he was a supervisor. Rodgers, who testified at the representation hearing on the duties of the operators, obviously was under the same impression, since Plant Engineer Tyler argued vigorously with him, the day after the hearing, about his testimony and criticized him for "denying responsibilities" which, Tyler insisted, he had. [18/] This argument occurred, of course, after the status of the senior operators was recognized by Respondent as of great importance in the union campaign. Hams, as stated, did not testify.

Finally, despite the use of these terms in the notices, there is a serious question whether Respondent, himself, regarded the senior operators as part of management. His letter dated July 27, which urged every employee to vote in the Board election, was sent to all of his KRH employees, including the senior operators. Sims testified that Angle, in his telephone conversation only a day or two after the representation hearing on August 9, stated that there would be 21 employees eligible to vote in the election, and Angle did not contradict Sims' testimony on this point. The stipulated list of production and maintenance employees as of July 1 consisted, as stated above, of 22 names including those of the senior operators. One man on this list, William Sloan, an instrument man, had been terminated on July 24, and no replacement for him appears on the list of employees as of August 9. [19/] Accordingly, Angle's reference to 21 employees eligible to vote is a substantially accurate statement based upon the inclusion of the senior operators.

18/ The distribution of the green "hard hats" to the senior operators shortly after the Board hearing has been disregarded as self-serving and without probative value.

19/ Respondent's record of KRH employees shows that R. L. Mootz started July 16 at $2.00 per hour. Since Sloan's wage rate had been $4.14 per hour during his entire employment which began September 4, 1965, it is unlikely that Mootz was his replacement.

Conclusions: The determination of whether specific employees are supervisors within the meaning of the Act is in each case a question of fact, to be decided by application of the statutory criteria to all of the relevant evidence. [20] Moreover, where the facts concerning supervisory status are in dispute, as they are here, I regard evidence of supervisory powers exercised---or not exercised---as far more persuasive than self-serving testimony concerning their mere conferral. [21]

The outstanding characteristic of the operation of this plant is that each operator in it, senior and junior alike, had not performed specific, preassigned tasks to keep it running. Practically all of the so-called directions by senior operators to juniors consisted of (i) calling the junior's attention to functions he was required to perform and which he had neglected to perform by reason of oversight or inability to see the indicator calling for its performance, (ii) on the basis of greater experience, advising the juniors how to perform one of his assigned tasks, or (iii) cooperating with the junior in the performance of a task that required joint performance.

Directions concerning nonroutine operations, even the periodic loading of trucks, were given by the undisputed supervisors through the "special orders book" and here also the senior and junior operators, as they read these directions, knew on the basis of their assigned duties to which of them each instruction was addressed.

On the basis of all the relevant evidence, and weighing it as set

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20/ "It is a question of fact in every case as to whether the individual is merely a superior workman or lead man who exercises the control of a skilled worker over less capable employees, or is a supervisor who shares the power of management." (N. L. R. B. v. Southern Bleachery & Print Works, 257 F. 2d 235, 239 (C. A. 4, 1958) enfg. 118 NLRB 299, and 115 NLRB 787. See also: Trailmobile Div. v. N. L. R. B., (C. A. 5; June 21, 1967).

21/ Purity Food Stores, Inc., 150 NLRB 1523, enfd. on this point, 354 F. 2d 926 (C. A. 1; 1965); Filler Products, Inc. v. N. L. R. B. 376 F. 2d 369 (C. A. 4; 1967), enfg, 159 NLRB No. 113.

forth above, I find and conclude that the senior operators are, at most, leadmen and that they are not supervisors within the meaning of the Act. 22/

2. The Refusal to Bargain

In view of the reopening of the record herein on the issues raised by the pleadings with respect to the allegations of refusal to bargain; viz, the appropriateness of the unit set forth in the complaint and the Union's claim of status as the designated representative of the employees in that unit, decision of those issues must be reserved for the Supplemental Decision which will be issued when the record on them has been completed.

3. Interference, restraint, and coercion

a. The incidents in issue

The complaint, as amended November 23, alleges that Respondent, directly or through his agents, interfered with, restrained, and coerced his employees in the exercise of their rights of self-organization, and thereby violated Section 8(a)(1) of the Act, by the following conduct:

(i) July 1: by Tyler, s interrogation of employees;

(ii) July 5: by Angle's threat to close the plant;

(iii) July 15: by Tyler's threat to withhold benefits;

(iv) July 28 (amended at the hearing from July 5): by Angle's threats of discharge;

(v) August 11: by Klein's grant of wage increases and promise of fringe benefits;

(vi) August 27: by Klein's threat of discharge;

(vii) September 13 to 16, by Angle's---

22/ See: Dewey Portland Cement Company, Inc., 137 NLRB 944, 949; United States Gypsum Company, 116 NLRB 656, 659--660.

(a) interrogation concerning union activities,

(b) threats of discharge,

(c) interrogation concerning their voting intentions, and

(d) threats to block the election;

(viii) September 16: by Owen's threat to block election;

(ix) September 21: by Angle's grant of wage increases.

The General Counsel's brief, however, after devoting one section to a discussion of the wage increases of September 21 (item ix, above), lists nine additional incidents claimed to constitute "threats and interrogation," contending that in each of them Respondent violated Section 8(a)(1) of the Act. The list of nine incidents, however, includes six which occurred during the series of interviews conducted by Angle between September 13 and 16 (item vii, above). The remaining three on the General Counsel's list are: (1) on August 17 conversation between Angle and employee Bishop; (2) a September 20 conversation between Angle and Sims following the discharge of Sims and five other employees; and (3) the July 28 speech by Angle (item iv, above).

The August 17 incident on the General Counsel's list is not alleged in the complaint as one of the violations of Section 8(a)(1) of the Act [23/] and, therefore, no consideration can be given to it for that purpose. [24/] Similarly, the complaint's allegations of interference, restraint, and coercion do not set forth anything like the statements made by Angle in his conversation with Sims on September 20, and, therefore, no finding of violation can be made on them. However, the statements of Angle on this occasion have been considered in determining his motive for his discharge of Sims and the other employees.

23/ There is noting similar alleged at the approximate time and, therefore, the General Counsel's routine motion "to conform the pleadings to the proof" on minor variances cannot help him here.

24/ Consideration will be given to this incident in determining the existence of the "good-faith doubt" claimed by Respondent as his justification for refusing to bargain with the Union.

Checked against the other incidents of interference, restraint, and coercion alleged in the complaint, the General Counsel's brief makes no mention of those numbered, on the list above, (i), (ii), (iii), (v), and (viii). More importantly, the record contains no evidence in their support. Accordingly, the allegations concerning them should be dismissed.

The August 27 incident in which, the complaint alleges, a threat of discharge was made by General Manager Klein (item vi, above), is not on the list in the General Counsel's brief, but the record does contain evidence relating to it. Despite the General Counsel's failure to refer to it, there is nothing to justify a conclusion that the issue has been abandoned and, therefore, consideration will be given to the evidence.

b. The July 28 Speech

The July 28 statements of Angle, allegedly violative of Section 8(a)(1) of the Act, occurred at a steak dinner which he gave at a local motel. Present were practically all of the KRH employees not then on duty, some of Angle's oil field workers, and several members of his family. Angle admittedly made a speech. According to Dwayne Johnson, the only employee---and the only person other than Angle---who testified on this matter, Angle was angry: He said he had been through two wars and that he would "get" anyone who crossed him; that he had a violent temper and a passion for revenge. Angle then said, Johnson testified,

> that his relation with his oil field employees had always been a matter of root-hog-root [25] and that they had always been that way or he would shut the plant down or sell it or give it to L. B. J.

25/ The aphorism, correctly phrased, is "root, hog, or die." It is defined, by authorities on usage, as follows:

Whether Angle used this expression accurately, as noted, or in some other sense, there is no doubt--and I find---that he said, in effect, that if he could not continue to treat his KRH employees as he had always treated his oil field employees (none of whom are organized), he would close the plant. The record, particularly Angle's letter to his KRH employees dated July 27 and his admission that about the end of July he had been reliably informed that practically all of them had signed union cards, makes it quite clear that he was referring to the change in relationship that would necessarily follow from their designation of the Union as their collective-bargaining representative. His statement, therefore, that he would not change his relationship with his employees and that, if compelled to do so, would shut down or sell the plant, cannot be interpreted as anything less than a threat in restraint of his employees' rights of self-organization. 26/ Accordingly, I find that Respondent, by this threat to close the plant if the employees should designate the Union as their representative, violated Section 8(a)(1) of the Act.

25/ (Continued)

> An expression, usually of imperative force, indicating the necessity of either working hard or suffering undesirable consequences. [Dictionary of American English (1944)]
>
> With either a complete, overwhelming success as a result of hard work or a total failure; complete acceptance, cooperation, work, and sympathy or total rejection. [Wentworth & Flexner: Dictionary of American Slang (1960)]

From the context of Angle's speech, as described by Johnson, and his attitude, as expressed in his letters of July 11 and September 19, it appears that Angle used the aphorism with admirable precision.

26/ Angle testified that "there was no speech": that at the conclusion of the dinner one of the KRH employees made a brief "thank you" statement and that he answered by noting that it was the first time that he and his family had been able to get together with the KRH employees. He also testified, however, that he referred to

c. The August 27 Threat

Russell Bishop also testified that on August 27, he met Norman E. Klein, Respondent's comptroller for all of his enterprises and general manager of the KRH plant, at a pool hall in Otis. They talked for a while and then began discussing the Union: Klein said that Angle had told him that he didn't care what the Union said or did; he was going to hire and fire whom he pleased and "was going to get rid of all the union agitators or organizers." Klein denied having been in Otis on the 27th---although he admitted having been there on both the 18th and 31st: he also admitted that he visited the pool hall every time he came to Otis and that he had met Bishop there but he denied having had a conversation with him in which he discussed the firing of any employees. Klein, however, admitted that about this time he was asking "some of the employees" why they were discontented with conditions in the plant and that that was one of his reasons for his visit on the 31st, but he "didn't believe" he had asked Bishop because he didn't know Bishop very well. Klein also admitted that, before going out to the plant at that time, he and Angle had discussed the discontent of the employees but did not think Angle had "specifically" directed him to find out about it.

Bishop appeared to be a credible witness and his testimony concerning this encounter is consistent with other credible testimony concerning Respondent's activities. Whether it occurred on the 27th, as he testified, or on the 31st, when Klein admitted he was at the pool hall, is not important. Klein, on the contrary, was evasive:

26/ (Continued) his letter of July 11 to all KRH employees and assured them it was "all the company . . . [they] all worked for each other." It is to be noted that the opening words of this letter are as follows:

> The past several days, I have just become aware of the misunderstanding, conflict and the resulting dissatisfaction with my employees at the Kansas Refined Helium Company plant.

This admission makes Angle's testimony incredible: I reject it and credit Johnson's account of the incident.

after conceding practically all of the elements of the conversation to which Bishop testified, he merely denied that he had discussed anything concerning the firing of employees. I credit Bishop's testimony, reject that of Klein and find that Klein's statement that Angle would "get rid of all the union agitators and organizers" was a threat to discharge employees for exercising their right of self-organization which violated Section 8(a)(1) of the Act.

d. The Inverviews

The series of interviews conducted by Angle with each of his employees at the KRH plant is the most comprehensive and revealing of his efforts to forestall the employees' efforts at self-organization. He conducted these interviews continuously from Tuesday, September 13 until Friday, the 16th and he completed them on Monday, the 19th. They ran, he testified, from 8 a.m. until 3 a.m., so that he could see the employees on all three shifts, and the interviews ranged from half an hour to 3-1/2 hours in length.

Angle testified that he followed the same pattern in every interview, first pointing out to the employee that he, Angle, had not previously interviewed the employee but that he was doing so not because he felt that the situation was "desperate." Angle also warned each employee that he would be asked many questions, to some of which he, Angle, knew the answers and to some he did not: that he wanted the employee to feel free to speak his mind and thus to preserve his self-respect. Angle then asked each employee why he felt there was "dissension" in the plant, and showed each of them the first of the three anonymous letters, asking him to read it. While the employee was reading the letter, Angle testified, he watched the employee closely to observe his reactions or for any indication that he had previously seen it. He then showed each of them the second letter---which Angle himself had circulated and posted, with his own covering letter, when it was

first received---and then followed with the third letter. Angle then discussed the letter with each employee, asking him whether he did not think the writer "must have an unbalanced mind, was mentally sick." Angle also told each of them that he had compared, with the aid of a microscope, the first and second letters with a letter written on the KRH office typewriter and had decided that they had been written there; that, because of the large number of people in the plant during the day, these letters must have been written during the night or early morning shifts when only three people were there and that more than one person must have known about them.

After discussing the "dissension" and the anonymous letters with each employee, Angle testified, he asked each of them---except Rodgers, who testified at the Board hearing---whether he had signed a union card. Those who said they had were asked why they had done so. Each employee was also asked by Angle for the names of those who had been talking about the Union and each was asked where he had obtained the union card which he had signed. Angle testified that he told each employee that he had to find "this group of malcontents, the agitators that were . . . causing this tremendous dissension . . . and get them out the gate and never to return . . . ."

The six employees who testified concerning the interview---Bishop, Harris, Sims, Rodgers, Johnson, and Wakulich---confirmed Angle's testimony concerning the format of the interviews and they supplied additional details.

Russell Bishop testified that Angle opened the conversation by telling him to forget they knew each other and to act as if Bishop had just come in looking for a job. Angle then showed him the third anonymous letter which, in obnoxious language, referred to nine KRH employees, including Bishop, as toadies and sycophants, and Angle angrily asked him whether he had written it or knew who had written it. Bishop denied any knowledge of the letter. Angle then stated that the inclusion of Bishop's name did not absolve him because anyone who

wrote an accusatory letter of this type might include his own name on the list in an attempt to divert suspicion and, having made this statement, Angle again asked Bishop whether he wrote the letter. Again Bishop denied it but agreed with Angle that the writer was probably "unbalanced." Angle then showed Bishop the second of the letters, which had been posted and circulated, and asked Bishop whether he had written that one and Bishop said he had not.

Their talk then turned, according to Bishop, to unions and Angle asked him whether he was "happy" at the plant. When Bishop said he was not, and that he wanted a retirement plan, Angle told him that he could go to "a million and one other jobs that were union" and that there he could get the benefits the KRH employees were asking of him: that he had no retirement plan for himself, so why should a young man like Bishop have one? Angle also said that anyone who wasn't "a hundred percent" for him had no need to be there; that he didn't want anyone there who was not "a hundred percent happy" and that he would get rid of anyone who was not. Angle then asked Bishop how he would vote in the election. When Bishop answered that the ballot was a secret one and that one of the foundations of this nation's democracy was the secret ballot, Angle said something like "democracy hell; if it weren't for me, you would be out the gate." Angle then said that he was going to get rid of all the "malcontents," of all those who were not "a hundred percent" for him, and that Bishop would be one of the first to go. At this Bishop asked Angle if he was through because, if he was, he would "walk down the road." Angle detained him for a few minutes more but Bishop said there was no need of further talk, since Angle had already made up his mind.

This testimony of Bishop was credibly given, it was not denied by Angle and I accept it as an accurate account of the interview.

John Harris testified that his interview with Angle lasted for an hour; Angle told him to conduct himself as if he were applying for a

job because he was going to make some changes and wanted some information; and there were some people in the plant who were "causing trouble" and that management was upset. Angle pointed out that they were pleased that Harris had been doing a good job: he then flatly asked Harris whether he had signed a union card and, when Harris said he had, asked him why he had done so. Harris said that he considered that the plant management was "pretty messed up;" he wanted to know what the plant policies were, particularly with respect to insurance; the rule on sick leave was simply that Angle would determine what was "normal" and there would be no specific amount stated; and he felt that, for the Company's policies to be acceptable, they would have to be in writing. Angle answered, according to Harris, that he was not going to put anything in writing; that if Harris wanted written policies he could go to a "union place" or back to Beechcraft, where he had come from. Angle said, angrily, that he did not have to make written policies and that he would not; there were "malcontents" in the plant; and he would find out who they were and get rid of them. Angle then asked Harris if he intended to vote for the Union; Harris said he did and Angle turned the talk to other subjects, such as Harris' education and plans for the future. After a period of discussion on these subjects, Angle again asked Harris if he still intended to vote for the Union; Harris said he thought he would have to and Angle expressed bewilderment. Angle said, according to Harris, that any employee who was for the Union would not be happy with his, Angle's operation of the plant and was, therefore, a "malcontent." Angle asked him what was wrong with the operation of the plant and how it could be remedied: Harris testified that he told Angle that there was confused and excessive supervision.

Angle did not dispute any of Harris' testimony outlined above; Harris was a credible witness and his testimony is accepted.

Russell Sims testified that his interview with Angle lasted over an hour and a half: that Angle, in addition to saying that it was in the nature of a prehire interview, stated that Sims was to explain his qualifications for the job he held and that his future employment and wages would be dependent on his statement; Angle, after going over his own life history and accomplishments, said that he had his "life's work" in the KRH plant; he could not afford to "mess around" with the trouble at the plant; and the interviews were for the purpose of determining which employees he would eliminate and which he would keep.

According to Sims, Angle stated that Sims had signed a union card and that he was one of the "big union agitators," as were all the senior operators. Angle accused Sims of bringing in Harris and Rodgers, who were both "big union men" from Victor's Refinery, but Sims insisted that Rodgers had always been antiunion. After asking Sims whether he hadn't passed out union cards, Angle said he was not going to have a union in the plant; that he couldn't permit the Union, the National Labor Relations Board, or Sims to stand in his way, but that he would run the plant to suit himself.

Angle continued, Sims testified, by saying that he would find out who had signed union cards and would fire every one of them; he would fire anyone who was not "gung-ho" for Angle; and by the time he got through firing people there would not be anybody left to vote for the Union.

During the interview, Sims testified, Angle was angry; he shouted and banged his fist against the wall; he referred to himself as a "tiger" and said if "you pull a tiger by the tail, he is going to turn and claw you to bits and you have got one by the tail."

Angle testified at some length concerning his interview with Sims but he emphasized his inquiries concerning the anonymous letters. He also testified that Sims expressed a strong desire for a

written statement of employee policies and assigned the lack of such statement as a major cause of the dissatisfaction and "dissension" in the plant. Angle outlined the benefits accorded the KRH employees and said he did not understand what they were dissatisfied about and he noted that Sims had said that it was mainly because the terms were not in writing.

Most of Sims' testimony concerning his interview with Angle merely added details to the testimony of the other witnesses and of Angle himself. Sims' account of Angle's statements to him, however, more specifically connected the talk of "dissension" and "dissatisfaction" with union activity. But Angle's own testimony concerning the interview with Sims went further than it did with the others and he testified that, by the end of his talk with Sims, he came to the conclusion that Sims had written at least the first of the anonymous letters. It is important to note that this letter, in the paragraph preceding the last, puts a prediction into the month of an employee of Airco [27] that the dissatisfaction caused by Angle's plant manager "would without question, in a short time have a union in your plant, and then their personnel would organize." The Union's demand for recognition followed this letter by only a few days and Agnle's conclusion that Sims had written it lends credence to Sims' testimony that Angle discussed the Union's involvement more openly with him than with other employees. Moreover, Angle did not specifically deny this testimony of Sims. Accordingly, I accept Sims' testimony concerning Angle's statements during the interview.

Arel Rodgers testified that his interview with Angle lasted over 1-1/2 hours. Angle showed him a copy of a letter from the Union [28]

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[27] Airco purchases gas from KRH and keeps several employees at the plant to facilitate deliveries.

[28] The record does not show which letter was involved.

and asked him whether he had received one. When Rodgers said he had not received a copy, although he was generally familiar with its contents, Angle said: "You mean to tell me you stick your neck out at the hearing and they don't even bother to send you a copy of these things?"

Angle said, according to Rodgers, that he had spent a lot of time and effort in the building of his business and that he would not let a union or anyone else destroy it; there would be no election; and he would fire those that were for the Union and there would not be enough left to vote for it. Rodgers testified that he told Angle he intended to vote for the Union and that they needed a union but Angle tole him to check with some of his other employees before deciding on what he needed. Rodgers also testified that Angle said that all of the senior operators were "union agitators" and that he was going to fire all of them.

Angle testified that Rodgers was the one employee he probably did not ask whether he signed a union card because Rodgers testified at the Board hearing. Angle also testified that he asked Rodgers why he had changed from being antiunion to prounion and inquired whether this change of attitude was due to the fact that he had received a 25-cent-per-hour raise when the others received 35 cents. Angle testified that he told Rodgers that his lesser increase was due to the fact that his performance of duty was not as good as the others but that Rodgers answered that, in being prounion, he was speaking for the others at the plant.

Angle did not specifically deny Rodgers' testimony and it is accepted as reliable.

Dwayne Johnson testified that Angle opened the interview by saying that the rule governing the discussion was that "anybody that was not a hundred percent happy with his job and a hundred percent happy with the way Mr. Angle ran things would be fired;" Angle also said

he would fire anyone who was wishy-washy or couldn't make up his mind whether he was "a hundred percent" happy and for Angle; and he would do this to make sure he got them all so that "when he got through firing people, there wouldn't be anybody left to vote for a union." Johnson also testified that Angle asked him how he intended to vote but that he pointed out that the ballot was secret and he wouldn't answer the question, and that Angle also asked him how many he thought would vote for the Union, to which he answered that he did not know.

Angle also said that "any time you punch a red tiger with a sharp stick you would get immediate violent action" and that it would be even easier for him to fire Johnson "after the Union got in---if it did."

According to Johnson, Angle said that there were "some long faces" around the plant after the Regional Director's decision holding the senior operators to be supervisors because "the instigators were big for the union and now they can't even vote."

Angle did not contradict Johnson's testimony and it is accepted.

John Wakulich, the only witness concerning the interviews who was not discharged and who became a senior operator in December 1966, was called as a witness by Respondent. He testified that his inverview with Angle followed that of Sims and lasted about 2 hours; and that Angle asked him who had written the anonymous letters and he answered that he did not know. Wakulich also testified that Angle asked him whether he had signed a union card and whether he intended to vote for the Union; that he told Angle that he intended to vote against the Union. Angle said, according to Wakulich: "I want to get rid of the malcontents."

Angle did not contradice Wakulich's testimony and it carries significant weight, not only for this reason but because Wakulich must be regarded as a witness inclined to favor Respondent. Accordingly, his testimony is not only credible proof that Angle made these statements but it corroborates the parallel testimony of the other witnesses.

The testimony concerning the interviews is not in dispute. Based upon all of it, including that of Angle, there is no doubt that Angle opened each interview by indicating to the employee that his job was in jeopardy and that his continued employment would be dependent upon his statements during the interview. Angle admittedly asked each employee whether he signed a union card, from whom he had obtained it, and why he had signed it---all inquires for which there was, at that time, no justification.[29/] Angle also admitted asking each employee the names of those who had been talking about the Union and saying that he would find and fire the "malcontents" and "agitators." This interrogation and these threats were made under circumstances clearly coercive in character[30/] and Respondent thereby violated Section 8(a)(1) of the Act.

More specifically, Angle's statement to Bishop and Harris, that if they wanted a union they should go to plants that have them, are threats of discharge for union activity and, therefore, violative of Section 8(a)(1).[31/] His statement to Harris that anyone who was for the Union could not be happy in his work for Angle and was, therefore, a "malcontent," must be considered in connection with his statement to each of the employees who testified concerning the interviews that he would get rid of the "malcontents;" to several of them that anyone not "a hundred percent" for him was a "malcontent" and his statement that there would be no election because there would not be a sufficient number left to vote for the Union. This combination of statements also constitutes a threat of discharge for union activity violative of Section 8(a)(1).

29/ Respondent had long since taken the firm position that he would not bargain with the Union and there was no case pending for which such questions might constitute preparation. See: Blue Flash Express, Inc., 109 NLRB 591, 592; Joy Silk Mills, Inc. v. N. L. R. B., 185 F. 2d 732, 742--743 (C. A. D. C., 1950).

30/ Bourne Co. v. N. L. R. B., 332 F. 2d 47 (C. A. 2; 1964). See also: Struksnes Construction Co., Inc., 165 NLRB No. 102.

31/ Crystal Tire Co., 165 NLRB No. 82.

There is also substantial evidence---and I find---that, in these interviews, Angle identified the senior operators as "union agitators" and said he would fire them; he threatened to fire everyone who had signed a union card; and he said he would not have a union in the plant. All of these statements, I find, constitute interference, restraint, and coercion of employees in their exercise of rights of self-organization and they are, therefore, violative of Section 8(a)(1) of the Act.

e. The Unilateral Pay Increase

On September 21, the day following the discharge of the six employees involved herein, Respondent informed all the remaining employees (except two, who had been hired June 6 and July 17, respectively), of increases in their hourly wage rates, effective September 26, from $.15 to $1.00. This unilateral pay raise, the complaint alleges, constitutes both an interference with the employees' exercise of their right of self-organization and a failure by Respondent to bargain collectively with the designated representative of his employees. Neither of the submitted briefs deals with this situation.

The record shows that, in his letter dated July 27 to all the KRH employees, Respondent wrote:

> We have just completed a review and raised wages in all other divisions of the company. The question came up about raises for KRH employees. I have checked and found that the union can file unfair labor practices charges against us if we either give or promise to give new raises to any employees that the union claims to represent.

Shortly thereafter, the Union wrote Respondent a letter, quoting the above excerpt from his letter and stating:

> This is to advise you, and by copy of this letter to the National Labor Relations Board they are likewise advised, that the Oil, Chemical and Atomic Workers International Union will

> not file unfair labor practice charges against you or your company by reason of your granting to employees of KRH the same or similar wage increases as granted to your other employees so long as such wage increases are granted on an equitable and non-discriminatory manner, now or at any time before the NLRB election among KRH employees.

Had Respondent not discharged the six employees on September 20, and had the pay increases been granted in "an equitable and non-discriminatory manner," the Union might well be regarded as having waived its right to challenge this conduct. The limitation which it placed upon its waiver, however, precludes this interpretation, since the discharges are found herein to have been discriminatory. Accordingly, I find that this unilateral wage increase, with an election scheduled soon to be held, 32/ constituted interference with the employees' right of self-organization violative of Section 8(a)(1). 33/

4. The discharges

Angle completed his interviews with the KRH employees on September 19 and, on the same day, prepared a letter of termination. The next day, at the plant, Angle had six employees sent to his office: Russell L. Bishop, John Harris, Russell Sims, Arel Rodgers, Dwayne Johnson, and Thomas B. Garrett. Angle handed each of them a copy of the letter of termination 34/ and a check for their accrued pay and

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32/ The letter from the Board agent, informing Respondent that, because of the filing of the charge herein, the election would be indefinitely postponed, was dated September 21 and was, presumably, not received until the following day.

33/ N. L. R. B. v. Exchange Parts Co., 375 U. S. 405.

34/ It is to be noted that, despite the detailed and personal accusations in the letter, it appears to have been machine duplicated, with the name of each of the discharged employees separately typed, and that the identical letter was handed to all six of the employees discharged.

2 weeks' severance pay, saying: "I don't like long goodbyes; pick up your gear and get out." All of them left except Sims, who testified that he remained a few minutes and talked with Angle. According to Sims, he asked Angle why they had been discharged and Angle, after first referring Sims to the letter of discharge, went on to say that he had put all of his life's work into the KRH plant, that he would not permit the Union or the National Labor Relations Board to come in and tell him what to do, and that those discharged had caused the "trouble" at the plant. Angle also said, Sims testified, that if he got rid of these six it would scare the remainder of the employees at the plant, that some of those remaining had lied to him about signing union cards but that he would find them out and fire them as he intended to fire everyone who had "anything to do with it." Angle finished by saying that he had paid his attorney $5,000 so far but he didn't need a lawyer anymore and intended to take care of the matter his own way---that he had to do anything necessary to protect himself.

Angle did not dispute any of this testimony by Sims; none of it is inherently improbable and it is all consistent with other statements found herein to have been made by Angle on other occasions and to other employees. Accordingly, I find that Angle made the statements set forth above. They not only illuminate Respondent's motive in discharging these six employees but they also constitute threats of discharge violative of Section 8(a)(1).

The letter of dismissal opens by informing the employee that Angle was terminating the employment "for some of the following reasons." It then states that Angle's "entire life's work is at stake in the debts" on which the KRH plant is based, and that his relationship during the past 12 years with his 100 employees had been characterized by friendship on his part and, on theirs, "unquestioned loyalty and dedication" to Angle or "the growth of the Company." The letter then accuses the employee of being dissatisfied, of feeling justified in not cooperating, and of refusing to take orders.

Angle admitted, however, that none of the discharged employees had ever refused to take orders from him or anyone who worked for him, except that he had "the recollection that this situation existed between Mr. Owens and Mr. Sims." When asked how the discharged employees had refused to cooperate, Angle said that he believed that they were cooperating: he also admitted that, just before the discharges, the plant's efficiency had reached its highest point, about 75 percent, and that "their performance was not the basis for their discharge."

After making the charges set forth above, the letter of dismissal continues:

> Further, you are completely insistent that I am going to change my lifelong concept, my business and my relationship with the other 100 employees, or else you are going to remain malcontent and dissatisfied in your job, and perhaps, not even do me the favor to continue to work for me.
>
> I am terminating your employment with me as a favor to both of us. I have never and will never allow anyone to work for me who is dissatisfied, malcontent, feels he is doing me a favor, refuses to accept my leadership in running my company.

Angle testified that he personally selected the employees to be discharged and that he ignored any recommendations by Tyler or Klein in making his selections. He also testified that every one of the six employees discharged had said, in his interview, that he wanted the employee policies reduced to writing. 35/ But the quoted paragraph,

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35/ If the discharge of these employees was due to the fact that each of them had asked that the Company's employee policies be reduced to writing, their discharge would be violative of Section 8(a)(1) of the Act (N. L. R. B. v. Washington Aluminum Company, 370 U. S. 9).

I find, clearly indicates that Angle viewed the effort of his employees, led by these six, to designate the Union as their collective-bargaining representative, as their insistence that he change his "lifelong concept" [36] which required that he discharge them.

In his testimony, however, Angle went beyond the reasons stated in the letters of dismissal and contended that he discharged these six employees because he had concluded that they were somehow involved in the three anonymous letters that he had received and which, in his opinion, had contributed to the dissension and "malcontent" in the plant.

There is a substantial amount of evidence in the record concerning these anonymous letters and, therefore, although I regard Respondent's preoccupation with them as a "red herring," i.e., a device to divert attention from the main question, [37] consideration must be given to them.

In the first place, all three of the letters were addressed and sent to Angle and, except for his action in circulating and posting the second one, with a covering letter of his own, they need not have come to the attention of any of his employees except those who wrote them. [38]

In the second place, none of the letters is abusive toward Angle. On the contrary, they appear to be trying to tell him of deficiencies in the operation of the KRH plant of which he might not otherwise have been informed. Nevertheless, Angle's reaction to the letters seems not only to have been overdeveloped, but unresponsive as well. This conclusion

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36/ None of Angle's employees, in any of his enterprises, have ever been represented by a labor organization.

37/ Angle may have been genuinely upset by the letters but, as shown by several findings herein, there is no doubt that he recognized that the real challenge to his unrestricted powers of management came from the self-organizational activities of the KRH employees. The effect of these letters in motivating Respondent's actions under examination in this proceeding was, I am convinced, inflated herein as a tactic of litigation.

38/ Except for Wakulich, who testified that Sims showed him the second letter.

is not to be construed as an attempt, on my part, to sit in judgment on the direction or level of Angle's reaction: this is his prerogative and, if I were to find that his discharge of the six employees had in fact been based only upon their presumptuousness in having been connected with the writing of these letters, or any letters (except insofar as they might have constituted concerted activities for mutual aid or protection), he would not have committed an unfair labor practice in dischargine them.

My function in connection with this proceeding, however, is to make a finding concerning Respondent's true reason for discharging these employees. In performing that function, I am required to take into consideration all the relevant and probative evidence on the subject ----not just Angle's testimony. While Angle may have been irritated and upset by the failure of the writer, or writers, to sign these letters, there is nothing contained in them, or in their having been written and sent to him, so destructive of production or discipline in the plant as to justify the discharge of employees on the suspicion of having written them. 39/

There is substantial evidence in the record, on the other hand, which points to the conclusion that Angle's true reason for the discharges was his conviction that these six were the center and strong point of the Union's organizing campaign. Angle learned, during the interviews---if he had not known it earlier---that there was a strong feeling, among the KRH employees, that their fringe benefits and conditions of employment should be reduced to writing. To this demand Angle had reacted angrily, telling employees that their future would be best secured by absolute loyalty to him and reliance upon his sense

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39/ It is unnecessary, in my opinion, to make a finding concerning which, if any, of the employees had written, or been involved in the writing of, these letters. Angle's testimony on his own conclusions is not clear: he testified that at one point that he was convinced that each of the discharged employees was either involved in, or had some knowledge of, the letters but he admitted he had no proof as to any of the employees.

of fairness, rather than on written documents. In his denigration of written conditions of employment, Angle was inferentially directing his attack, I find, at the prospect of a union contrace, which would undoubtedly contain such conditions.

Angle's statements to Sims, after the discharges had been effected, showed beyond doubt that it was his intention to carry out the threat made several times earlier to several other employees: that he would see that there were not enough union sympathizers left in the plant to constitute a majority in favor of the Union.

It follows, therefore, that I reject Angle's claim that the employees were discharged because of some connection with the anonymous letters and I find that he discharged each of them to discourage their membership, and that of other employees, in the Union.

Respondent, foreseeing the possibility of the foregoing finding, contends that misconduct by three of the discharged employees, Sims, Garrett, and Johnson, nevertheless requires that they be denied any remedy of reinstatement. Respondent's basis for this contention is, as to each of the employees, the following: as to Garrett, that he "failed to appear" at the hearing herein; as to Johnson, that he admitted to Wakulich that he could not hear conversations in the office of Plant Manager Owens from a position in the building rafters; and, as to Sims, that he abstracted company files, that he gave conflicting testimony, and that he "otherwise" misconducted himself.

The argument concerning Garrett is utterly without substance. The General Counsel presented the witnesses he believed necessary to adduce testimony and other evidence sufficient to prove the allegations of the complaint. Garrett was not among them. There is nothing in the record to indicate that Respondent made any effort to have Garrett present at the hearing and no request was made, during the hearing, for a subpena to compel his appearance.

Although Wakulich's testimony concerning his conversation with Johnson is generally vague, he was clear in stating that the occasion on which Johnson said he was "on the rafters" was before Angle used that office for his interviews with the employees. Taking this testimony at fact value, it fails to show that Johnson admitted being in the space above the office for any improper purpose or that Johnson's remark was anything other than a casual statement in an innocent context.

The situation with respect to Sims is more complicated, since Respondent has exerted great effort to prove that Sims actually wrote one or more of the anonymous letters and was involved in the creation of others. As set forth above, however, I cannot find that the writing of these letters constituted misconduct at all---much less the heinous offense it appears to be Angle's eyes. 40/ Accordingly, I reiterate, in connection with Respondent's contention that Sims has forfeited his right to reinstatement, the same conclusion I stated in assessing the truthfulness of Angle's statement that he discharged Sims for his connection with the letters: namely, that it is not necessary that I make a finding concerning Sims' connection, if any, with the letters.

Respondent's argument that Sims should be denied reinstatement because of his "conflicting testimony" herein is rejected: any conflicts in his testimony have been given consideration in reaching conclusions on those matters which involved it. No authority is cited in support

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40/ Angle several times stated that the aspect of the letters that troubled him was that they indicated that some of the employees were "dissatisfied" or "malcontent" and to Angle, therefore, dangerous. If this was Angle's primary concern, the writing of the letters could not constitute misconduct since, as previously stated, they were directed only to Angle. They did not insult him in any way (counsel's characterization of them as "obscene" is unconvincint), and they were at attempt to get Angle to repair the factors which were causing the discontent to which the letters pointed.

of Respondent's argument and I can see no relationship between any such conflicts and "misconduct" as used in this connection.

More serious questions are those relating to Respondent's contention that Sims abstracted papers from Angle's brief case and eavesdropped on Angle's interviews with the other KRH employees.

Assuming without deciding, however, that Sims did take some papers out of Angle's brief case during a recess in the interviews and that he attempted to overhear some of the conversations by listening from the nearby washroom, I am not convinced that this action constituted "misconduct" so serious under the circumstances as to justify a denial of reinstatement. It is settled Board doctrine that reinstatement may be denied to employees on the basis of misconduct "coercive in nature and calculated to instill fear of physical harm" in other employees. 41/ In making such determination, moreover, the Board is required to weigh the alleged misconduct of the employee against the unfair labor practices, if any, of the employer in the same connection. Here Sims' alleged misconduct is not only completely without taint of coercion against any other employee, but his acts were closely related to conduct by Respondent---the coercive interviews---held herein to have been in violation of Section 8(a)(1) of the Act and they were carried on by him in an effort to minimize or dispel Angle's coercive pressure on the employees engaged in activities protected by the Act.

Accordingly, I find no justification in the record for denial of reinstatement to any of the discharged employees.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in Section III, occurring in connection with its operations described in Section I, have a close,

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41/ N. L. R. B. v. Thayer Company, 213 F. 2d 748, 757 (C. A. 1; 1954); H. N. Thayer Company, 115 NLRB 1591, 1596 (1956); Plastic Applicators, Inc., 150 NLRB 123 (1964), enforcement denied 369 F. 2d 495 (C. A. 5; 1966).

intimate, and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

The General Counsel urges that, in view of the egregious nature of Respondent's unfair labor practices and his declared intention to continue and repeat them until all union supporters have been discharged, the prescription herein of the usual remedy of backpay, less interim earnings, for the discharged employees would be inadequate to protect the public interest. By his unfair labor practices, he argues, Respondent has effectively discouraged his employees from exercising their guaranteed rights and has prevented them from selecting a collective-bargaining representative. In the present posture of the case, however, it has not been decided whether the employees made a valid designation of a collective-bargaining representative of that Respondent has improperly refused to bargain with it. The application of the remedy urged by the General Counsel must, therefore, be determined on the basis of Respondent's conduct with respect to the discharged employees and his interference with the exercise of rights by the other employees found above.

Despite court approval of the Woolworth formula [42] and the Board's customary award of interest on backpay, [43] both of which can result in the receipt by a discharged employee of a sum that might exceed lost pay less interim earnings, and the statement of Mr. Justice Murphy, partially dissenting in Phelps Dodge Corp. v. N. L. R. B., 313 U. S. 177, 206, that ". . . nothing in the Act requires a backpay award

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42/ F. W. Woolworth Company, 90 NLRB 289, 291; approved in N. L. R. B. v. Seven-Up Bottling Company, 344 U. S. 344.

43/ Isis Plumbing & Heating Co., 138 NLRB 716.

to be diminished by the amount actually earned . . .," I am not convinced that the remedy requested by the General Counsel could be justified, under the circumstances of this case, as necessary or appropriate to effectuate the policies of the Act. Granted that Respondent's unfair labor practices were flagrant and that some of his statements may be construed as threats to continue or repeat them, it has not been shown that the normal processes and remedies of the Board and the courts will be insufficient to remedy them. The record does not show Respondent ever to have previously violated the Act--- much less that he has been so persistent a violator that only by so drastic a remedial measure as that sought by the General Counsel herein could the purposes of the Act be effectuated. The proposal to eliminate, at this stage, the usual offset of interim earnings seems to me much closer to a punitive than a remedial measure. Punitive measures have not been considered authorized by the Act and I shall not recommend this one.

Having found that Respondent has engaged in unfair labor practices violative of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. More specifically:

(i) Having found that Respondent has interfered with, restrained, and coerced employees in their exercise of rights guaranteed them in the Act, I shall recommend that he cease and desist from such conduct and post an appropriate notice.

(ii) Having found that Respondent discriminatorily discharged Russell L. Bishop, John Harris, Russell Sims, Arel Rodgers, Dwayne Johnson, and Thomas Garrett, I shall recommend that he offer each of said employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make each of them whole, for any loss of pay he may have suffered by reason of the discrimination against

him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of his reinstatement, less his net earnings during said period. Such backpay shall be computed on a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289, and with interest thereon at the rate of 6 percent per annum as prescribed by the Board in Isis Plumbing & Heating Co., 138 NLRB 716.

In the view of the nature of Respondent's violations found herein, which go the heart of the Act, and his threats to repeat them, I shall recommend that Respondent cease and desist from interfering in any manner with his employees' exercise of rights guaranteed in the Act.

Conclusions of Law

1. George A. Angle, doing business as Kansas Refined Helium Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Oil, Chemical and Atomic Workers International Union, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By coercively interrogating employees concerning their union activities and the union activities of other employees; by threatening to discharge employees for union adherence and activities; by threatening to close the plant because of employees' union activities; by discharging six employees for concertedly requesting that plant working conditions be reduced to writing; and by granting an increase of wages to discourage employees from adherence to, or activities on behalf of, the Union, Respondent has interfered with, restrained, and coerced employees in their exercise of rights guaranteed in the Act and has thereby committed unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discriminatorily discharging Russell L. Bishop, John Harris, Russell Sims, Arel Rodgers, Dwayne Johnson, and

Thomas Garrett to discourage their membership in the aforesaid labor organization, the said Employer has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the record in this case applicable to the issues involved in the findings of fact and conclusions of law, it is recommended that the Respondent, George A. Angle, doing business as Kansas Refined Helium Company, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating his employees concerning their adherence to, or activities on behalf of, Oil, Chemical and Atomic Workers International Union, AFL-CIO, or any other labor organization, or concerning such adherence or activities of any other employee; threatening to discharge employees for union adherence or activities; threatening to close his helium plant because of employees' union activities; discharging employees for concertedly requesting that plant working conditions be reduced to writing; or granting wage increases to discourage employees from adherence to, or activities on behalf of, any labor organization; provided, however, that nothing herein shall be construed as requiring Respondent to withdraw benefits heretofore granted.

(b) Discriminating in regard to tenure of employment or any term or condition of employment against any employee to discourage membership in, adherence to, or activities on behalf of, the aforesaid labor organization or any other labor organization.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Offer to Russell L. Bishop, John Harris, Russell Sims, Arel Rodgers, Dwayne Johnson, and Thomas Garrett immediate and full reinstatement to their former or substantially equivalent positions to those which they held immediately prior to September 20, 1966, without prejudice to their seniority and other rights and privileges and make each of them whole for any loss of pay they may have suffered by reason of the discrimination against them in the manner set forth in the section of the Preliminary Decision entitled "The Remedy."

(b) Notify Russell L. Bishop, John Harris, Russell Sims, Arel Rodgers, Dwayne Johnson, and Thomas Garrett, if presently serving in the Armed Forces, of their right to full reinstatement in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to ascertain any backpay due under the terms of this Recommended Order.

(d) Post at his plant at Otis, Kansas, copies of the attached notice marked "Appendix." [44/] Copies of said notice, on forms provided by the Regional Director for Region 17, after being signed by Respondent, shall be posted by him immediately upon receipt thereof, and be maintained by him for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees

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44/ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Engorcing an Order" shall be substituted for the words "a Decision and Order."

are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 17, in writing, within 20 days from receipt of this Decision, what steps he has taken to comply herewith.[45/]

IT IS RECOMMENDED that the allegations of the complaint concerning interference, restraint, and coercion of employees in the exercise of their rights of self-organization, insofar as not found in the Preliminary Decision herein, and insofar as they do not arise out of the allegations of refusal to bargain, be dismissed.

Dated at Washington, D. C. September 12, 1967.

CERTIFIED TRUE COPY
O. W. FIELDS
EXECUTIVE SECRETARY, NLRB
DATE September 12, 1967

45/ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 17, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, I hereby notify my employees at the Kansas Refined Helium Company plant that:

I WILL NOT coercively interrogate my employees at that plant concerning their adherence to, or activities on behalf of, Oil, Chemical and Atomic Workers International Union, AFL-CIO, or any other labor organization, or such adherence or activities of any other plant employee.

I WILL NOT threaten to discharge any employee for union adherence or activities and I WILL NOT threaten to close the plant because of employees' union activities.

I WILL NOT discharge any employees for concertedly requesting that plant working conditions be reduced to writing.

I WILL NOT grant wage increases to discourage employees from adherence to, or activities in behalf of, the above union, or any other labor organization---but nothing in the Preliminary Decision of the Trial Examiner requires that I rescind or cancel any wage increase or other benefit heretofore granted.

I WILL NOT, in any manner, interfere with, restrain, or coerce my employees in the exercise of their rights of self-organization; to form labor organizations; to join or assist Oil, Chemical and Atomic Workers International Union, AFL-CIO, or any other labor organization; to bargain collectively through representatives of their own choosing; to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

I WILL, upon request, reinstate Russell L. Bishop, John Harris, Russell Sims, Arel Rodgers, Dwayne Johnson, and Thomas Garrett to the same, or substantially equivalent, positions to those which they held immediately prior to September 20, 1966, without prejudice to their seniority and other rights and privileges, and will make them whole for any damage they may have suffered by reason of the discrimination against them by paying each of them a sum of money equal to that which he would normally have earned as wages from the time of his discharge to the date of his reinstatement, less net earnings during said period, computed quarterly and with interest thereon at 6 percent per annum.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

GEORGE A. ANGLE, doing business as
KANSAS REFINED HELIUM COMPANY,

Respondent

and

Cases Nos.
17-CA-3021
17-CA-3021-2

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO,

Charging Party

Gerald A. Wacknov, Esq., and
R. L. De Prospero, Esq., for the
General Counsel.
Patrick F. Kelly, Esq., of Wichita,
Kans. (Frank and Kelly), and John R.
Tadlock, Esq., of Denver, Colo., for
the Charging Party.
Marvin J. Martin, Esq., and W. Stanley
Churchill, Esq., of Wichita, Kans.
(Martin, Wooley & Grey) for the Respondent.

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

SIDNEY D. GOLDBERG, Trial Examiner: As set forth in my Preliminary Decision, issued September 12, 1967, the complaint in this consolidated proceeding [1/] alleges that George A. Angle, in the operation of his enterprise under the name Kansas Refined Helium Company (herein sometimes called Respondent, KRH, or the Company), interfered with, restrained, and coerced employees in their exercise

1/ Issued November 16, 1966, on charges filed September 21 and 22, 1966, and an amended charge filed November 1, 1966. It was thereafter amended at the hearing on January 19, 1967.

of rights guaranteed them in the Act; discriminatorily discharged six employees to discourage their membership in the Oil, Chemical and Atomic Workers International Union AFL-CIO (herein called the Union), and, although the Union was the designated collective-bargaining representative of his employees in an appropriate unit, refused to bargain with it, thereby violating Section 8(a)(1), (3) and (5) of the Act.

After the trial before me at Great Bend, Kansas, on January 18, 19 and 20, 1967, and prior to the issuance of my decision on the issues therein presented, the Regional Director issued an order vacating the Decision and Direction of Election in Case No. 17-RC-5126, involving the Respondent herein. Since it was on the basis of this Decision and Direction of Election, and the Board's denial of review thereof, that I had rejected, at the trial, any evidence to controvert the allegation of the complaint that the unit therein set forth was an appropriate one for the purposes of collective bargaining, the vacatur of the Decision and Direction of Election which vitiated its standing as a substantially unassailable basis for a finding of appropriate unit in this case, [2/] made it necessary, to afford Respondent a fair hearing herein, that he be permitted to adduce evidence on the subject. Accordingly, I ordered the record reopened for that purpose.

To avoid delay, however, in the disposition of issues not affected by the vacatur of the Decision and Direction of Election, I issued the said Preliminary Decision disposing of the issues not dependent upon a finding of appropriate unit for collective-bargaining purposes.

The issues set forth in my order reopening the record came on for trial before me at Wichita, Kansas, on August 9 and 10, 1967. All parties were represented, afforded an opportunity to adduce relevant evidence, cross-examine witnesses, and argue on the facts

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[2/] See: Charles F. Reichart, 124 NLRB 28.

and the law. Supplemental briefs were subsequently filed by the General Counsel and by counsel for Respondent. The General Counsel's post-hearing motion to receive an additional exhibit was granted on the terms set forth in the order granting the motion.

In my Preliminary Decision, I found that Respondent had interfered with, restrained and coerced his employees in their exercise of rights guaranteed by the Act, that the senior operators were not supervisors within the meaning of the Act, and that Respondent's discharge of Dwayne Johnston, Russell M. Sims, Arel Rodgers, Thomas B. Garrett, Russell L. Bishop and John S. Harris, was discriminatorily motivated to discourage membership in the Union.

The issues remaining in this case, and now to be decided, are:

(i) whether the unit set forth in the complaint, and stated by the Union in its demand for recognition, is an appropriate one for the purposes of collective bargaining.

(ii) whether the Union, at the time of its demand, represented a majority of Respondent's employees in that unit; and

(iii) whether Respondent's refusal to recognize the Union as the collective-bargaining representative of his employees in the said unit was based upon a good-faith doubt concerning its representative status.

For the reasons hereinafter set forth in detail, I find that the stated unit was an appropriate one for the purposes of collective-bargaining; that at the time of its demand for such bargaining the Union was the designated representative of a majority of Respondent's employees in that unit; that Respondent did not have a good-faith doubt concerning the status of the Union as such designated representative and that Respondent unlawfully refused to bargain with it, thereby violating Section 8(a)(5) and (1) of the Act.

Upon the entire record herein, and the demeanor of the witnesses, I make the following:

Supplemental Findings of Fact [3/]

III. The Unfair Labor Practices

A. Chronology and Issues

2. Chronology

a. Demand for Recognition and Refusal

The statements on this subject in the Preliminary Decision were limited to those relevant to the issues dealt with therein. They are, however, also relevant to the issues now under consideration and are incorporated at this point, together with the additional fact that the card used by the Union was that herein set forth in facsimile:

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION
MEMBERSHIP APPLICATION

LOCAL NO. _____ DATE _____

NAME _____
PLEASE PRINT

ADDRESS _____ CITY _____

COMPANY _____ CLOCK NO. _____

DEPARTMENT _____ CLASSIFICATION _____

AMOUNT OF FEE $_____ _____
Unit Retn Ex-Service

I hereby accept membership and and designate and authorize the Oil, Chemical and Atomic Workers International Union, as my collective bargaining agent in all matters pertaining to wages, rates of pay and conditions of work.

_____ _____
Witness Member's Signature

[Receipt attached]

3/ Since this decision is supplemental to the Preliminary Decision heretofore issued, all statements, findings, and reasons in that

B. Discussion and Findings

2. The refusal to bargain

a. The unit

(1) Background

The complaint alleges, as appropriate for the purposes of collective bargaining, a unit consisting of:

> All production and maintenance employees at the Respondent's plant, including instrument men and plant-clerical employees, but EXCLUDING office-clerical employees, casual and temporary employees, professional employees, guards, and supervisors within the meaning of the Act; and, employees of other operations of George A. Angle.

Both the Union's petition and its letter requesting recognition refer to a unit of "production and maintenance employees." There is nothing in the record to show that either the instrument men or plant-clerical employees were intended to be excluded from the units set forth in the position or the Union's letter. At the representation hearing, Respondent interposed no objection to the Union's request to amend its petition to include the single plant-clerical employee and the one instrument man then in the plant appears on the list of plant employees prepared by Respondent. [4/] No issue has ever been raised

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[3/] (Continued) decision are incorporated by reference herein. For clarity, therefore, the symbols designating the sections and paragraphs of this decision are identical with those of the sections and paragraphs of the Preliminary Decision. In addition, references to statements made "above" may refer to statements in my Preliminary Decision.

[4/] I note from the transcript of the representation hearing that Angle, in his very first comment concerning the plant employees, restricted the number of supervisors to three. These would be, necessarily, the plant manager, the production engineer and the chief of maintenance, thus clearly showing that he did not, at that time, regard the four senior operators as supervisors.

herein concerning the propriety of including the instrument men as production and maintenance employees and, accordingly, I find that no variance was created by the specific inclusion of these employees in the unit alleged in the complaint. 5/

When this case was first tried, the representation proceeding was still pending. The Union's request for review of the Regional Director's Decision and Direction of Election in that proceeding was restricted to his finding that the senior operators were supervisors and, therefore, excluded from the unit. Respondent's opposition to the request was likewise limited to this finding. The Board's telegraphic decision, moreover, expressly denied review except on this single question, which it reserved for determination through the "challenged ballot" procedure. Accordingly, at the time of this first trial, the unit set forth in the Regional Director's Decision and Direction of Election was foreclosed from relitigation by Section 102. 67(f) of the Board's Rules and Regulations. The status of the evidence on this issue having been modified by the procedural change set forth above, and by the taking of additional evidence thereon, it will now be discussed on the basis of a complete record. 6/

(2) Applicable principles

In discussing the question of "appropriate unit" for collective-bargaining purposes, it seems superflous, at this late date, to point out that there is no particular group of employees which constitutes

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5/ See: The Maxwell Co., 164 NLRB No. 97; TXD fn. 40.

6/ The testimony at the representation hearing held August 9, 1966, was received in evidence in this case pursuant to a stipulation by the parties that each of those witnesses, if called herein and asked the same questions, would give the same answers. Accordingly, that testimony is treated as if given in the case.

the appropriate unit under particular circumstances, but that each situation arises because a certain group of employees, delineated by an interested person for its own benefit, is designated "an appropriate unit" and the Board's confirmatory decision sought for that delineation.[7] This point must be made, however, because Respondent's able and experienced counsel, although conceding that each of the several possible groupings of Respondent's employees set forth in his brief would constitute a unit appropriate for collective-bargaining purposes, forcefully argues that the unit chosen by the Union herein, and approved by the General Counsel through the complaint, is one that cannot possibly be considered appropriate.

To be preliminarily disposed of is Respondent's "straw man" in the shape of a claim that the General Counsel, in relying upon "presumption" of the appropriateness of a plant-wide unit, has thereby failed to sustain the burden of proof necessary to prove his case. The short answer is that any recognized presumption of law, if applicable to the facts which have been proved, takes the place of further proof and leads -- in the absence of contrary proof by the opposite party (where the presumption is non-conclusive) -- to the indicated result.[8]

Although, therefore, I put this claim aside as specious, Respondent is nevertheless accurate in pointing out that the Board has also repeatedly stated that employer-wide units are "presumptively appropriate." The explanation for these apparently conflicting "presumptions" is to be found in the fact that the Board, in determining the appropriateness of a particular unit for collective-bargaining purposes, is performing its regulatory or licensing, rather than its adjudicatory, function.

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[7] Packard Motor Car Co. v. N. L. R. B., 330 U. S. 485, 491; N. L. R. B. v. Dewey Portland Cement Co., 336 F. 2d 117 (C. A. 10; 1964).

[8] See: IX Wigmore on Evidence §2491.

Accordingly, when it uses the words "presumptively appropriate," it is neither creating nor invoking a presumption of law to make a factual finding, but it is using those words in their ordinary, communicative, sense to indicate that the unit under examination seems, absent a showing of countervailing factors, to be a reasonable one for the statutory purpose. This explanation, together with the broad discretion conferred by the Act on the Board to determine appropriate units, accounts for the coexistence of "presumptions" of appropriateness for both plant-wide and employer-wide units when proposed by applicants under the Act, since Section 9(b) lists "employer unit, craft unit, plant unit, or subdivision thereof" as units appropriate for the purposes of collective bargaining. 9/ In view of the Board's broad discretion,

9/ This dichotomy in the Board's functioning is recognized and explained by the court in N. L. R. B. v. Krieger-Ragsdale & Co., 379 F. 2d 517 (C. A. 7; May 1967). In that case the Board had designated, as appropriate units, two separate groups of employees of the same employer working in the same plant: one of lithographic employees and the other of bindery, shipping and receiving employees. The employer contended that only a single, plant-wide unit could be appropriate and that there was not substantial evidence to support the Board's decision. Rejecting the employer's contention and enforcing the Board's bargaining order, the court wrote:

Section 9(b) of the Labor Management Relations Act gives the Board discretion to determine appropriate bargaining units; and the Board's informed exercise of discretion is rarely to be disturbed. E. g., Packard Co. v. N. L. R. B., 330 U. S. 485; N. L. R. B. v. Weyerhaeuser Company, 276 F. 2d 865 (C. A. 7; 1960). The same cases state that substantial evidence is also an applicable standard of review.

These standards, however, are not merely alternative formulations of a single standard. They differ in substance as well as form, and in the instant case, it is necessary to distinguish them in order to express clearly the functions of this court on review of unit determinations.

The discretion which the Board is entitled to exercise lies in the area of establishing, case by case, those facts which it deems generally relevant, but not conclusive, in the drawing of

therefore, any unit proposed, which is not inconsistent on the facts with the wide range set forth in the Act, could be labeled "presumptively appropriate" and regarded as adequate; i.e., "appropriate," for the purpose of collective bargaining in the absence of a contradictory showing. 10/ Cases cited by Respondent as specifically applicable herein are discussed with the conclusions set forth below.

(3) Respondent's operations

After starting as a geological clerk for Sinclair Prairie Oil Company in 1940 and a long interruption for military service,

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9/ (Continued) inferences. The discretion is exercised when the Board finds some set of relevant facts determinative in a particular case. Cf. Jaffe, Judicial Control of Administrative Action 555-56 (1965). The determination is discretionary because the relevance and import of similar facts may shift from case to case.

Unit determinations fall into this category of discretionary decisions. Unit determinations are not findings of fact, but judgments upon the facts in accordance with varying guidelines of relevance or rules of inference based upon experience and the purpose of the statute being administered. Because the exercise of discretion of relevance in a particular case, prior Board unit determinations in other cases have precedential value only in the sense that they disclose facts the Board has previously considered relevant.

10/ The effect of, and the manner of operation under, these "presumptions" is illustrated by the decision in Miratile Manufacturing Co., Inc., 124 NLRB 48, in which the Board wrote.

> Moreover, a two-plant unit is, in fact, employer-wide. It is, therefore, a type of unit specified in the Act, and is presumptively an appropriate type of unit. However, the appropriateness of a broad unit does not preclude the appropriateness of a smaller one where there are, as here, factors that show that the smaller unit may also be appropriate.

Similarly, in Western Electric Co., 98 NLRB 1018, cited by Respondent, the Board, in the course of a long and detailed opinion, wrote:

George A. Angle began to build his complex of gas and oil enterprises in 1954 when he adopted the trade-name Frontier Oil Company and hired his first office employee. During 1954 and 1955 he conducted geological explorations for oil and gas, taking mineral leases and hiring contractors to drill the wells. He found that, in the year 1955, he had entered into such contracts sufficient in extent to keep a drilling rig busy for a full year. Reasoning, he testified, that he could earn the contractors' profit for himself if he owned a righ, he bought one, designated that enterprise Red Tiger Drilling Company and hired personnel to operate it. Later that year he purchased a cable-tool unit to complete the wells drilled by Red Tiger Drilling; he named this operation Great Plains Drilling Company and hired employees for it. In 1957 and 1958, he added additional leases and wells to his holdings and, in 1959, purchased a second drilling rig, to which he gave the name Red Tiger No. 2 and for which he hired operators.

To support his drilling and finishing operations, Angle required trucking services and he obtained them by contract. When he found that his needs would justify the purchase of trucks, he bought them, called the operation Red Tiger Trucking Company, and hired the necessary operating employees. On the same basis, he subsequently formed Red Tiger No. 3 and added a second rig to Great Plains Drilling; he formed Hayes Tank Service to carry water to the drilling sites; he set up Red Tiger Caterpillar to clear and to move the earth at those sites, and he established Comanche Supply Company to purchase supplies for all of his operations.

10/ (Continued)

> . . . it may be stated as a general rule that, absent any statutory considerations, the Board does not refuse to grant a company-wide unit to a labor organization unless it is affirmatively shown that a smaller one is more appropriate.

To the same effect is Sav-On Drugs, Inc., 138 NLRB 1032, also cited by Respondent.

Angle's purpose in separately naming and operating these enterprises, he testified, was to keep a constant check on the profitability of their operations. Moreover, with the exception of Frontier Oil, which is the name of his general operation, and possibly, of Great Plains Drilling, all of Angle's enterprises are kept busy to their fullest capacity so that, when there is no work for them within his organization, they operate under contracts with other people who require their specialized services.

Until 1965, Angle sold the gas and oil from his wells to refiners. He knew, however, that the natural gas in that area contained a substantial amount of helium and, in 1964, he entered into a contract with American Messer, a company specializing in the construction of gas refineries, to construct a plant for him so that he could extract the helium component of the gas flowing from his wells and sell that refined gas to industrial wholesalers or consumers.

A brief account of the progress -- and some of the problems -- of the construction of the Kansas Refined Helium plant, its commencement of operations in late 1965, and its ultimate delivery to Angle about April 1966, have been sketched in my Preliminary Decision herein. Like all his other enterprises, the plant is owned -- subject to loans -- solely and directly by Angle but, also like the others, the records concerning its operations are kept separately so that Angle can be fully informed concerning its efficiency and profitability.

Although Respondent was given an opportunity, when the record was reopened August 9, to show changes, if any, in the operation of the plant since the trial in January, it was conceded that there have been no substantial changes in its operation or in its interrelationships with Angle's several other enterprises since that time. Accordingly, the evidence given at the trials in both January and August will be drawn upon, without distinction, in examining and deciding the issues herein.

In support of his contention that the production and maintenance employees of the plant do not constitute a unit appropriate for collective-bargaining purposes, Respondent adduced evidence claimed to show that:

(i) all of Angles' enterprises are involved in the production of gas and oil, are owned and managed by Angle from a single office, and are engaged in an integrated process to produce and sell oil, gas and refined helium;

(ii) there is a substantial interchange of employees, both temporary and permanent, among the various operations and their skills are similar;

(iii) at least two additional non-supervisory employees, the pipeline riders, are vital to the plant's operation and have no other operating affiliation so that they, at least, must be included to make the unit an appropriate one;

(iv) all of the operations are conducted in close geographical proximity to each other; all of the gas wells (except the first 12 completed) feed into the plant; and an inventory of pipe and other supplies for all of Angle's operations are stored on Angle-owned property in the immediate vicinity of the plant;

(v) all employees in the various operations enjoy (or will soon enjoy) the same employment benefits;

(vi) all of the operations have the same collective-bargaining history: i. e., none.

Respondent further contends that the only basis for the allegation of this unit in the complaint is the extent of the Union's organization and that the establishment of a unit on that basis is prohibited by Section 9(c)(5) of the Act.

There is no dispute, nor could there be, that Angle is the sole owner and operator of the several enterprises described above; that

they are all concerned with crude oil and natural gas; that he maintains, for all of his enterprises, the records he requires at his office in Wichita; and that he is the final authority, as to all of them, on all matters of management, finance and labor policy.

Although these circumstances might justify the designation of a unit of all of Respondent's employees as appropriate had a labor organization sought to represent them, that is not the issue in this case. As stated above, and as Respondent's counsel concedes, there are several possible groupings of Angle's employees into units that might be designated as appropriate for the purposes of collective bargaining.

Similarly, there is no doubt that there is a continuity of effort by Angle and his employees from the time a gas mineral lease is executed, through the drilling and completion of the well, the construction of the pipeline from the well-head to the gas refining plant, the refining of the gas, and its delivery to the dealer or user, that might also justify the designation of a unit of all employees engaged in the production and refining of gas as appropriate for the purposes of collective bargaining. But here again, no labor organization seeks to represent these employees and the question need not be decided.

The record shows that the Kansas Refined Helium plant is a well-defined manufacturing installation, self-contained and requiring only the continuous supply of raw material for operation. 11/ It has a

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11/ The function of the plant in Lion Oil Company, 90 NLRB 102, cited by Respondent, was an adjunct to, integrated with, and necessary for the operation of the field. It created no substantial product but merely assisted in getting the owners' real product, oil, out of the ground for sale. The degree of integration, moreover, was shown by the fact that the employees were freely interchangeable and that the entire operation was under the supervision of a single production superintendent. In this case, the Kansas Refined Helium plant operates in line with Angle's

full supervisory staff with Norman Klein, the comptroller of all of Angle's operations, acting as general manager of the plant; Henry Tyler, an engineer specially trained and experienced in cryogenic (low temperature) engineering, as production manager, and John Stiff, in charge of the maintenance of the plant and its machinery. There is a complete and permanent complement of operating and maintenance personnel organized in shifts to keep the plant running 24 hours a day, 7 days a week. While Norman Klein, its general manager, is also comptroller of all of the Angle enterprises, it appears from the record that Klein does not spend all of his time at the plant and that, under the direction of Tyler and Stiff, the plant is an autonomous operation. Accordingly, I agree with the argument of the General Counsel that the production and maintenance employees of the plant, with such exclusions as are customary, constitute presumptively an appropriate unit, and in the absence of evidence to show otherwise, will be so found. 12/

There are, however, two points which I consider substantial that are made by Respondent in support of his contention that the production and maintenance employees at the Kansas Refined Helium plant do not constitute an appropriate unit: (i) that employees of other Angle enterprises devote a portion of their time working in the plant, and (ii) that the unit is incomplete without the inclusion of the two pipeline riders.

11/ (Continued) gas wells and simply carries the process one distinct step forward. Instead of refining the gas in his own plant, Angle had, prior to 1966, sold the raw gas to others for refining. Moreover, the plant can, and does, refine helium gas from sources other than Angle's wells; viz., the Government line.

12/ Appliance Supply Company, 127 NLRB 319; Southern Paperboard Corporation, 112 NLRB 302.

Respondent's time records show that employees of Great Plains Drilling Company have, on occasion, performed services at the Kansas Refined Helium plant. Elmer Snyder and Leo Baum, drillers employed by Great Plains Drilling Company, testified that, when their rigs were not operating and they wished to keep working, they were sent either to Red Tiger Trucking, where they worked as truckers' helpers, or to the Kansas Refined Helium plant, where they did any maintenance work assigned to them. 13/ There is also evidence that employees normally with other Angle operations from time to time assisted in making connections in the pipeline system or to the compressors which assist in the flow of gas through the pipelines. These employees received, whatever they were doing, the wage rates which they received while on their regular jobs.

In all of this activity, however, I can find no substantial or regular pattern that would justify a conclusion that the employees of Kansas Refined Helium do not constitute an appropriate unit by reason of these occasional services performed by other Angle employees. These additional services are performed on a casual basis, the primary interest of the employees is in another operation, and there is nothing to show that the employees have a sufficient community of interest with the regular employees at the plant to warrant their inclusion in the unit. 14/

The situation with respect to the two pipeline riders is not nearly so clear and Respondent makes the appealing argument that these two employees, if not part of the plant organization, are part of no organization in which they can be represented for collective-bargaining purposes.

13/ The exhibits showing summaries of Respondent's time records are received in evidence.

14/ Georgia Highway Express, Inc., 150 NLRB 1649; Piggly-Wiggly El Dorado Co., 154 NLRB 445, 449.

While the record does not support the statement in Respondent's brief that the pipelines riders check in at the plant twice a day to find out whether the gas flow is adequate, there may be some justification for including them in the unit. The description of the unit in the complaint however, would not preclude their inclusion if they are -- and they may be -- maintenance employees. The only obstacle seems to be the claim of Respondent that the General Counsel's reading of the unit description as set forth in his brief, requires that their place of employment be at the plant.

As against Respondent's belated concern for the collective-bargaining aspirations of the pipeline riders, I direct attention to his concession, at the representation hearing, that a production and maintenance unit -- if held appropriate notwithstanding his contention that it was inappropriate -- would consist of the list of employees which he prepared at that time and which did not include the pipeline riders. Since this argument is made at this late date by Respondent, and not by the excluded employees, I am convinced that he is estopped to rely upon it and I reject the argument. 15/

Accordingly, I find that the unit set forth in the complaint is an appropriate one for collective-bargaining purposes.

The stipulated list of Respondent's KRH employees, as of June 30 or July 1, when he received the Union's demand, contains 22 names, including those of the 4 senior operators. Since I have found, in the Preliminary Decision, that the senior operators are not supervisors,

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15/ As noted below, 18 of the 22 employees in the production and maintenance unit validly designated the Union as their representative and the addition of 2 more of the unit would not impair the majority status of the Union. There is, moreover, nothing in the record to support Respondent's argument that the designation of the unit is based solely upon the extent of organization.

they are included in the unit found appropriate herein and it follows, therefore, that these 22 are the employees involved.

b. The Union's status as representative

As stated above, Union Representatives Patton and Williams came to Great Bend at the request of one of the KRH employees and they held a meeting with several employees on June 22. At this meeting, Russell Sims, Arel Rodgers, Dwayne Johnson, and John Harris signed Union application cards. On or before June 30, according to the General Counsel's evidence, 12 more cards were signed and, on July 2, 2 more, making a total of 18 employees designations of the Union in the unit containing 22. All of these cards were received in evidence on the basis of proof that they had been actually signed by the employees whose names appear thereon and Respondent has not raised any issue with respect to their authenticity.

Several arguments are made by Respondent, however, in support of his contention that the cards, although signed, do not constitute effective designations of the Union by those employees.

Respondent's argument that the cards, because they are entitled "Membership Application" and the text is in "fine print," are ineffective as union authorizations according to their terms, is too attenuated to require serious consideration and is hereby rejected.

In further support, however, of his argument that the Union was not designated as bargaining representative by a majority of the employees, Respondent contests the validity of some of the cards on the basis of defects on their face, and he contests their validity, generally, on the ground that the signers were told, directly and by Union literature, that the purpose of the cards was "merely" to hold an election.

It is to be noted, preliminarily, that the employees involved in this case were engaged in tasks requiring frequent reference to technical manuals and the exercise of considerable intelligence. Not only is it

clear that every one of them could read and write, but their jobs actually require an ability to comprehend the material they read. Moreover, the Union card, set forth in facsimile above, is brief, clear, and unequivocal, and it makes no reference to an election. The signature, therefore, of a literate person who has read it to a statement that

> I hereby . . . designate and authorize the . . . Union as my collective bargaining agent in all matters pertaining to wages, rates of pay and conditions of work

would normally be -- substantial prima facie proof of such designation. The Board, with Court approval, has consistantly held that such proof cannot be overcome except by substantial evidence that the cards were solicited on the representation that they would be used only to secure an election. 16/

In support of Respondent's argument that the signing employees were told that the cards were "merely" 17/ for an election, the record shows that several pieces of Union literature were in circulation among the employees beginning June 22, when the first cards were signed. One of these, a booklet of 20 pages, is entitled "You're invited" and, generally, explains the advantage of belonging to a union. In this booklet, two pages -- including a half-page illustration -- under a heading "How do you organize?" are devoted to a description of an

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16/ Cumberland Shoe Corp., 144 NLRB 1268, enforced 351 F. 2d 919 (C.A. 6; 1965); Jas. H. Matthews & Co., 149 NLRB 161; enforced 354 F. 432 (C.A. 8; 1965), cert, den, 384 U.S. 1002; Bernard S. Happach, 151 NLRB 560, enforced 353 F. 2d 629 (C.A. 8; 1965); Gotham Shoe Mfg. Co., 149 NLRB 862, enforced 359 F. 2d 684 (C.A. 2; 1966); Furr's Inc., 157 NLRB No. 38; enforced 381 F. 2d 562 (C.A. 10; 1967), cert. den. Oct. 9, 1967; The Shelby Manufacturing Company, 155 NLRB 464; Brandenburg Telephone Company, 164 NLRB No. 26.

17/ The words "merely," "only," and "solely," as used in this context, all connote exclusiveness and they are interchangeable.

organizing procedure which includes the signing of "authorization cards," the filing of a petition with the Board, and the holding of a Board election. The illustration that takes up half of one of these pages shows people voting. The description ends with the statement:

> If more than half the people balloting vote for OCAW then you have adopted this union as your official collective bargaining agency.
>
> You and your fellow workers then set up your local union structure within the OCAW.

If the Union's entire presentation, oral and written, to prospective card signers consisted of these two pages, a reader thereof might reasonably conclude that the signing of authorization cards was but a single, inconclusive, step in a series of events which, if successfully concluded by a majority vote for the Union, would constitute the designation of the Union as collective-bargaining agent for the group. 18/ Respondent, however, in basing his argument on the presumption that the card signers read, and were influenced by, the contents of these two pages, must necessarily also presume that the same card signer had read the entire booklet of 20 pages extolling the advantages of union membership, including the final page which is in the form of a slightly different authorization card and to which his attention was specifically directed in the two-page description of procedure. The card, after the identification of the signer, reads as follows:

> I hereby designate and authorize the Oil, Chemical and Atomic Workers International Union, AFL-CIO, as my collective bargaining representative in all matters pertaining to wages, rates of pay and conditions of work. I also hereby authorize said Union to request recognition from my employer as my bargaining agent and/or to petition the National Labor

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18/ Compare: Bauer Welding & Metal Fabricators, Inc. V. N.L.R.B., 358 F. 2d 766 (C.A. 8; 1966).

> Relations Board for an election for certification of said Union as my bargaining representative.

The language of this card, incorporated by reference into the description of procedure on the two earlier pages, clearly sets forth alternative procedures for the Union's use of the cards: i.d., either to make a request for recognition or to file an election petition.

While one other piece of Union literature makes reference to an election, [19] several other leaflets present only the arguments in favor of belonging to a union. One of these other leaflets makes the statement, without any reference to an election, that:

> When all of the workers organize and send a committee in to see the manager, he will listen.

But even if it were assumed that every employee who signed a card had first read all of the Union literature and interpreted it as contended for by Respondent, the record shows that every one of them, also prior to signing his card, had at least one conversation with another person on the subject of the Union or the cards. Accordingly, no blanket rejection of the cards, as employee designations of the Union, would be justified on the basis of an analysis of the import of the Union's literature.

Respondent's brief does not designate any specific cards claimed to be invalid for reasons other than the general ones set forth above,

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19/ The ten-page pamphlet entitled "Look out below," which warns employees not to be diverted from their organizing efforts by predicted employer devices, states, at the bottom of its final page:

> While you're waiting for election day, the day you make the great decision, keep looking out for the blockbusters.

except that it points out that three cards, shown by testimony to have been signed the same evening, bear different dates. [20] Objection was made during the hearing, however, to some of the cards and, accordingly, each card is separately adjudicated herein on the basis of the evidence concerning the circumstances of its execution. [21] An observation appropriate to be made at this point is that, in assessing the weight of conflicting testimony and the demeanor of the witnesses to make resolutions of credibility, I have given consideration to the impace on the witnesses of relevant occurrences subsequent to the events involved in their testimony. The cards were signed in June and early July: thereafter, in July, August and September, Respondent carried on a vigorous antiunion campaign culminating in the discharge of six employees on September 20. These statements and actions by Respondent could not fail to have had some effect on the testimony of those who were still in Respondent's employ. [22] While there are, fortunately, some people who manage to testify accurately regardless

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20/ Two bear the date July 2 and one is dated June 30.

21/ Much is made by Respondent of the admission by Union Representative Patton that, although his signature appears on several of the cards as witness, he did not actually see them signed. Each card was adequately proved by testimony in this record and I find the point irrelevant.

22/ Concerning this same situation in another case, the Court of Appeals for the District of Columbia Circuit, in N. L. R. B. v. Preston Products Company, -- F. 2d -- (November 14, 1967; 66 LRRM 2548, 2552) wrote:

> . . . we have here the classic case of employees testifying under the eye of the company officials about events which occurred almost a year before and prior to the activities which were subsequently found to constitute unfair labor practices. It is certainly conceivable that those same threats and benefits which shook an employee's original support for the union also altered that employee's memory as to events which occurred before the presentation of such threats and benefits. 2/

of possible consequences, there are many others who, although perhaps trying and hoping to tell the truth, are involuntarily influenced by considerations of more immediate interest. And there are, of course, others.

Russell Sims, Arel Rodgers, Dwayne Johnson and John Harris: These men were the nucleus of the organizing effort at KRH, and they signed cards during their meeting with Union Representative Patton on June 22. There can be no doubt that they understood the simple language of the authorization card and there is no evidence of any statement made to them which could impair the validity of these cards as designations of the Union by these employees. I find them, therefore, valid.

Tom Garrett: Russell sims testified that, on the evening of June 22, he gave blank cards to Garrett and John Wakulich Junior operators then on the shift with him: that Garrett filled one out, except for the date, and signed it and that he, Sims, put in the date. Garrett did not testify but Wakulich, who was called on behalf of Respondent, corroborated Sim's testimony that he and Garrett were given cards by Sims at the same time. Wakulich was not questioned by Respondent's counsel concerning any statement by Sims relating to the purpose of the cards. Accordingly, there is no evidence to nullify the effect of Garrett's undisputed signature on the card and I find it to be a valid designation of the Union as his representative.

22/ (Continued)

2/ Indeed, 10 of the 13 employees relied upon by the the company had received not one but two pay increases during the "campaign" period. Surely the Board might well conclude that in the real world employer blandishments and coercion amounting to unfair labor practices during an election campaign can result in tailored testimony.

William Sloan testified that he was given a card by Dwayne Johnston; that he read it and signed it; that the date, 6/23/66, is in his handwriting. On cross-examination, he testified that he was told that the purpose of signing the card was "To petition the Union for an election for representation at the plant" but Respondent's counsel made no effort to have him clarify this ambiguous statement. In view of the clear language of the card and Sloan's testimony that he read it, I find that this statement is not sufficient to show that Sloan signed the card on the representation that it was solely for the purpose of obtaining an election. 23/ Accordingly, it constitutes a valid designation of the Union on his behalf.

John Wakulich: As noted above, Wakulich was given a card by Sims at the same time as Garrett and he was not questioned about any statement concerning its purpose. Wakulich, while he denied that the June 23 date on his card was inserted by him or that he signed it on that date, did not dispute Sims' testimony that he gave cards to Wakulich and Garrett on June 22. Wakulich testified that he read the card, filled in his name and address, signed it and returned it to Sims within 4 days after he received it. Accordingly, I find the card to be a valid and timely designation of the Union as Wakulich's representative.

Thomas B. Lynch: Union Representatives Patton and Williams both testified that on June 22, the evening of the meeting, they went to Lynch's home and that he then and there signed the authorization card. Lynch's testimony was conflicting: he first testified that Patton told him the card was for an election but he admitted that he could read and that he "glanced at" the card as he signed it. The card itself, however, shows that Lynch carefully filled in all the blanks, except

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23/ Furr's Inc. v. N.L.R.B., 381 F. 2d 562 (C.A. 10; 1967), cert, denied October 9, 1967; enforcing 157 NLRB 387.

the date, and that he signed it. After reading his own pre-trial statement, Lynch testified that Patton told him the purpose of the card was to obtain Union representation of the employees; that his testimony about reference to an election was based solely upon his own ideas out of his years of experience as a union member, and that Patton made no reference to an election. Accordingly, I find the card to be a valid designation of the Union by Lynch.

Harry L. Harms: Union Representative Williams testified that on June 23 he handed Harms an authorization card; that he asked Harms to read and sign it and that Harms did so. Harms was not called as a witness, although the record shows that he is still in Respondent's employ and that he holds a newly-created (in December 1966) supervisory position. There is no evidence impairing the validity of this card and I find it a valid authorization of the Union as of June 23.

Don Foose: Williams testified that, also on June 23, he gave a card to Don Foose, who signed and returned it to him. The record shows that Foose is still in Respondent's employ but he was not called as a witness. Accordingly, there is no evidence to impair the validity of this card and I find it to be Foose's designation of the Union as his representative.

Dean Tittel testified that, on June 23, he was given an authorization card by Dwayne Johnson; that he read the card, found it self-explanatory, filled it in, and signed it. Although he testified that Johnson said something about the possibility of using it to file a petition for an election, this vague reference to the possibility of so using the card does not, I find, impair its effectiveness as Tittel's designation of the Union as his representative and it is valid for that purpose.

Gerald Julian: According to Sims, he visited Julian at his farm early in the morning on June 23 and handed him a blank authorization card: Julian filled it in, signed it and returned it to him. Julian

admitted having filled in his address and having signed the card but testified that Sims told him it was "an inquiry pertaining to the Union." He testified that, although he filled in the card, he did not read it. He also admitted that Sims was with him from 5 to 10 minutes. On the basis of the witness' evasiveness and his demeanor while testifying, I reject his testimony that Sims told him that the card was for the limited purpose of an "inquiry." His purported ignorance of the purpose of the card was belied when he stated, on cross-examination, that he did not think it was "a union card." I find that he read and signed the card; that he understood its purport and that it constitutes a valid designation of the Union as his representative.

Russell M. Bishop testified that on June 23 he was given a card by Arel Rodgers, who told him that its purpose was to let the Union know what interest there was in Union representation at the plant and, if a majority were "interested," the Union could represent the employees. He also testified that he read it before he signed it. No serious question can be raised concerning the adequacy of this card as Bishop's designation of the Union and I find it a valid designation.

W. L. Roberts testified that, on June 27, Sims gave him an authorization card; that he read the card, inserted his name and post office box number, and that he signed it. All he could recall that Sims said to him was they they wanted to get the cards in that day. I find that this card constitutes a valid designation of the Union by this employee.

Jack E. Durbin testified that he obtained the authorization card when Sims laid it on his bench, saying that it was a "union card;" that he kept it for 2 days and that, when Sims asked him to sign the card because he needed to get the cards in, he filled it in and signed it, without reading "the fine print," and handed it to Sims. Durbin also testified that he knew what the card was and that he had been "in the union" for 8 or 10 years. There is no serious question about the

validity of the card as Durbin's designation of the Union and I find it to be valid for that purpose.

Ronald Weinman testified that he received an authorization card from Sims at the plant; that Sims said that signing it would not obligate him, as far as the Union was concerned, but that it was "just a recognition of the union." He testified that he filled in the date -- July 2 -- and all the other blanks on the card, that he "presumed" he read it, and that he signed it and returned it to Sims. There is no evidence that Weinman was in any way misled into signing the card and Respondent's offer of proof concerning the witness' understanding of the meaning of "recognize" was rejected. [24/] Accordingly, I find that Weinman validly designated the Union as his representative.

William F. Pickerill testified that he received a union card from Sims; that he dated it July 2, printed his name in the appropriate space and then signed it. Sims testified that Pickerill then returned it to him. Pickerill also testified that Sims said they would not have to join the Union and that, if the cards were signed, the Union would send out a man "to talk" to them. Pickerill, although he testified that he did not read the card before signing it, admitted that cards were being handed around in the control room; that "there were no secrets;" that Rodgers "may have" offered him the same cards several days earlier and that he did not sign it then because he was "deliberating." Upon all of the testimony of this witness, and his demeanor while testifying, [25/] I find that he did read the card, that he had not been misled concerning its purpose, and that the card constitutes a valid designation of the Union as his representative.

[24/] See Cumberland Shoe Corp., 351 F. 2d 917 (C. A. 6; 1965) and cases cited; Furr's, Inc., 381 F. 2d 562 (C. A. 10; 1967).

[25/] At the time of the hearing, Pickerill had been promoted to senior operator.

Jimmie Ham: Sims testified that he gave a card to Ham on June 30; that Ham signed it and returned it to him. Ham testified that Sims, when he gave him the cards, said that it was to entitle him, Ham, to vote in an election should there be one; that Sims said that 87 percent of the men had signed cards and asked him whether he would sign one. He also testified that he signed it without reading it. Ham, a senior operator, admitted that he and Sims had talked about the value of the Union in protecting the men and getting fringe benefits, such as a retirement policy, and that, at the end of their talk, he signed the card. When asked whether there was talk about having the Union represent the men, Ham said he could not recall any. On the basis of his entire testimony, and his demeanor while testifying, I find that Ham read and understood the card; that he signed it on July 2 [26]; that Sims did not restrict its purpose to the holding of an election and that the card constitutes a valid designation of the Union on Ham's behalf.

It is to be noted that the cards of Weinman, Pickerill and Ham were the only ones signed on July 2, and it was stipulated that the Union's request for bargaining was received by Respondent on June 30 or July 1. Even without these three cards, therefore, the Union represented 15 employees out of the 22 in the unit, a clear majority, when it sent its demand for recognition. Before Respondent had formulated its rejection of the demand and voiced its doubt that the Union represented a majority, these three employees had validly designated the Union as their representative. There is nothing in the record indicating that the Union had abandoned its demand prior to

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26/ This makes it probable that the others had all previously signed: 17 out of 22, so that the percentage of those who had signed was over 77 -- and Sims' statement was only minor "puffing."

July 2, [27] and there is nothing in the record that would make it unfair to Respondent to consider the demand as continuing for a few days after its receipt by Respondent. Accordingly, the Union's demand is regarded as continuing, at least until Respondent's refusal. [28] Upon all the foregoing facts, I find that the Union's demand for recognition was based upon valid designations from 18 of the 22 employees in the unit, and that it represented a majority.

C. Respondent's "good faith doubt"

In rejecting the Union's request for recognition, Respondent justified its position in the following words:

> In view of your Petition and the fact that we do not believe that a majority of our employees in the proper bargaining unit are in favor of the union, we will proceed to handle this matter through an election conducted by the National Labor Relations Board.

Respondent maintained this position at all times thereafter and the representation case proceeded step by step solely on the initiative provided by the Act and the Board's regulations. A hearing was noticed and held, the Regional Director's Decision issued and, after the intermediate appeal, the election was set for September 28. At no time,

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27/ The filing of the representation case petition does not constitute such abandonment. (American Compressed Steel Corp., 146 NLRB 1463, 1470-71, enforced on this point, 343 F. 2d 307 (C. A. D. C., 1965); Galloway Manufacturing Corp., 136 NLRB 405, 409; enfd. 312 F. 2d 322 (C. A. 5, 1963).

28/ Henry Colder Company, 163 NLRB No. 13; American Compressed Steel Corp., supra; Consolidated Rendering Company, 161 NLRB No. 3.

before or after its refusal to bargain, did Respondent make an effort to discover whether the KRH employees had actually designated the Union as their representative. The representation case shows no consent by Respondent that would facilitate the holding of an election. Respondent's right thus to "stand mute," if he desired -- or was advised -- to do so, is not questioned. 29/ His doing so, however, must be cast into the balance, along with the other evidence, in determining whether there existed the "good faith doubt" he now claims to have concerning the Union's status as the collective-bargaining representative of his employees.

The refusal to bargain appears to be based on three grounds: (i) the Union's filing of a petition; (ii) doubt that the employees involved constitute "the proper bargaining unit;" (iii) doubt that the Union had been designated by a majority.

(i) Respondent's reliance upon the Union's filing of a representation petition is misplaced. The Board has repeatedly held that the filing of a petition does not, in itself, suspend an employer's bargaining obligation, absent other evidence of a good-faith doubt. 30/

(ii) Although Respondent's letter of refusal makes reference to "the proper bargaining unit," there is nothing in the record to indicate that this reference was any more than the effort of prudent counsel to retain all possible defenses should litigation ensue. So far as this

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29/ Insofar as his position of intrasigence, however, is based upon an insistence upon an election, Respondent is in error. It is well settled that an employer does not have an absolute right to a Board-conducted election. (N. L. R. B. v. Trimfit of California, 211 F. 2d 206 [C. A. 9; 1954]; N. L. R. B. v. Philamon Laboratories, Inc., 298 F. 2d 176 [C. A. 2; 1962]; Snow & Sons v. N. L. R. B., 308 F. 2d 687 [C. A. 9; 1962]).

30/ Crown Tar and Chemical Works, Inc., 154 NLRB 562, 567, enf'd. 365 F. 2d 588 (C. A. 10; 1966); N. L. R. B. v. Glasgow Co., 356 F. 2d 476, 479 (C. A. 7; 1966); Galloway Manufacturing Corp., supra; Laabs, Inc., 128 NLRB 374; Midwestern Mfg. Co. Inc., 158 NLRB 1698.

record is concerned, the status of the senior operators as supervisors and, therefore, excluded from the unit, had never occurred to Respondent prior to the hearing in the representation case. 31/ Moreover, it has repeatedly been held, an employer's decision to refuse to bargain, on the ground that the designated unit is not an appropriate one for the purpose, is taken at the peril of the employer. 32/ Accordingly, it having been determined that the unit involved is an appropriate one for collective-bargaining purposes, Respondent's doubt thereof -- even if held in good faith -- is no justification for his refusal to bargain with the Union.

(iii) We come now to the most difficult of the three reasons set forth by Respondent for his initial refusal to bargain with the Union -- his claim of a "good-faith doubt" that the Union was the designated bargaining representative of a majority of the employees. It is settled law that, in determining whether an employer's refusal to bargain, with a union having no history of contract or certification, was based upon a good-faith doubt concerning the Union's representation of a majority of the employees involved, the burden of proof is on the General Counsel. 33/ This burden of proof, however, does not exist in a vacuum: Respondent's letter refusing to bargain stated that he did

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31/ I do not overlook the implications of the references to the senior operators in the orders and bulletins discussed in the Preliminary Decision but I am convinced that, if Respondent had intended to raise this point at the time of his refusal to bargain, he would have said so clearly.

32/ Bardahl Oil Company, 163 NLRB No. 32; United Aircraft Corporation v. N.L.R.B., 333 F. 2d 819, 833, cert. denied 380 U.S. 910; Florence Printing Co. v. N.L.R.B., 333 F. 2d 289 (C.A. 4).

33/ Aaron Bros, Co., 158 NLRB No. 108; Hercules Packing Corp., 163 NLRB No. 35; H & W Construction Co., Inc., 161 NLRB No. 77.

"not believe that a majority . . . are in favor of the union . . ." and there is nothing more in the record than this statement. As the court of appeals wrote, in N. L. R. B. v. C. J. Glasgow Co., 356 F. 2d 476, 479 (C. A. 7; 1966):

> To be "fair" or in "good faith" doubt must have a rational basis in fact. N. L. R. B. v. John S. Swift Co., 7 Cir., 302 F. 2d 343, 346. Here there is no evidence of probative value to justify a good faith doubt. In addition to its failure to reveal any reason for their "belief" the record discloses no action upon the part of Glasgow, Leone, or any other representative of the Company, to attempt to verify the Union's claim, either through inquiry addressed to the Union or to the employees.

But the Board's rule, placing the burden of proof on the General Counsel, also states that the decision on this point is to be reached on the basis of all the relevant evidence. Included in the evidence that may be considered is evidence of later conduct and statements which serve to cast light upon the motivation of earlier acts. Prominent, of course, are the statements of Respondent which have been found herein to constitute restraint and coercion of employees in their exercise of rights of self-organization. While the first of these incidents did not occur until July 28, [34/] more than 3 weeks after Respondent dispatched his letter refusing to bargain, and the others occurred in August and September, this delay alone, in the context of this case, is not decisive.[35/] Angle was a very busy man, engaged in many enterprises from his main office in Wichita, and the situation at KRH may not have seemed to him

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34/ This date has particular importance in that Angle testified that it was just prior to this date that he learned, from a source he considered reliable, that all of the KRH employees except one had signed union cards.

35/ See: Bernel Foam Products Co., Inc., 146 NLRB 1277, 1283-4.

to be critical -- until he was notified that specific things were about to happen. Thus, notice that a hearing would be held in the representation case was mailed from the Regional Office on July 15 and received by Respondent's counsel on the 18th; he was reliably informed shortly thereafter that all but one of the plant employees had signed up; and the dinner at which Angle spoke to some of the plant employees was held on July 28. The Regional Director's Decision of August 25, implemented on September 9 by the setting of September 28 as the date for the election, was closely followed by the elaborate series of interviews which Angle conducted with his employees beginning on September 13.

In addition to the July 28 speech and the mid-September interviews, both found in the Preliminary Decision to have been violative of Section 8(a)(1) of the Act, the record also contains evidence of relevant conversations which Angle had with Sims on August 10 and with Bishop on August 17, which are not dealt with as violations of that section because they are not fairly encompassed within the allegations of the complaint. As stated above, however, these incidents require consideration in determining Respondent's motivation in refusing to bargain with the Union.

Sims testified that, a day or two after the Board hearing on August 9, Angle called him at home, late in the evening, and they had a conversation lasting between an hour and an hour and a half. Angle said, according to Sims, that he had "just found out" that there was a serious trouble at the plant based upon dissatisfaction among the men; that he, Sims, agreed, and that Angle then talked at some length about his experiences growing up and starting in business; that Angle asked him whether he had signed a union card and that, when he said he had, asked him whether he had handed some out, which he denied. Angle also asked Sims whether he knew much about union procedure and, when Sims said he did not know much, Angle said he did not either but was "studying it quite a lot now." Angle then asked him, Sims

testified, whether he knew that if 11 men in a unit of 21 voted for a union, they would tell the others "what to do" and asked Sims whether he thought that was "democratic." Answering his own question, according to Sims, Angle then said he did not think there was anything to be democratic about; then he was going to run the plant and that nobody was going to tell him what to do.

Angle admitted having had a long telephone conversation with Sims at about this time and stated that Sims reminded him that it had been indicated to him by American Messer, when he was hired, that when the American Messer plant manager, Wilson, left Kansas Refined Helium, he, Sims might be considered for the job. Angle also recalled that Sims told him of his experience while employed at Victors Refining Company when a new plant manager came in who, Sims said, was "mentally unstable" and "acted like he was God." 36/ Angle, however, did not contradict Sims' account of their conversation and I find that it occurred as described by Sims.

Russell L. Bishop testified that on the evening of August 17, in the control room of the plant, Angle engaged him in conversation about the Union. Angle said, according to Bishop, that the employees would not have a chance to vote for at least a year and that during that year's time "he would get rid of the people that were instigating" the Union and that they would probably never get a chance to vote. Bishop testified that this conversation was in the presence of Corey Call, another junior operator, and that, although there were several other

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36/ The use of these phrases by Sims in this conversation, Angle testified, helped him decide, at his interview with Sims on September 13, that Sims had written the first of the anonymous letters discussed in the Preliminary Decision.

employees in the control room because there had been a buffet dinner and "open house" in the plant, Call was the only person who could have overheard the conversation. Angle admitted that he made brief visits to the plant in July and August and he did not contradict Bishop's testimony. Corey Call, although the record shows that he was still in Respondent's employ at the time of the hearing, was not called to testify. Accordingly, I find that Angle made the statements as testified to by Bishop.

On the basis of these statements by Angle, of the other statements found in the Preliminary Decision to constitute interference with, restraint and coercion of his employees in their exercise of their rights of self-organization, and of his conduct in discriminatorily discharging six employees on September 20, I find that Respondent did not, when he refused to bargain with the Union on July 6, have a good-faith doubt concerning its representation of a majority of the employees in the designated unit, but that his refusal was based upon a desire to gain time to dissipate and destroy the Union's status as the collective-bargaining representative of those employees.

This conduct by Respondent, therefore, was violative of Section 8(a)(5) of the Act. [37/]

The unilateral wage increases granted by Respondent on September 21, described in the Preliminary Decision and therein found to have constituted interference with the employees' rights of self-organization, were granted at a time, it has herein been found, when the Union was the collective-bargaining representative of the employees at the plant and when Respondent was, therefore, under a duty to bargain with the Union concerning such matters. Accordingly, this conduct also constituted a refusal to bargain violative of Section 8(a)(5) of the Act. [38/]

37/ Joy Silk Mills, Inc. v. N. L. R. B., 185 F. 2d 232 (C. A. D. C. 1950) cert, den. 341 U. S. 914.

38/ N. L. R. B. v. Katz, 369 U. S. 736.

V. The Effect of the Unfair Labor Practices upon Commerce

The activities of Respondent set forth in Section III, occurring in connection with its operations described in Section I, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. The Remedy

Having found in this Supplemental Decision that Respondent has engaged and is engaging in additional unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action, including the posting of an appropriate notice, to effectuate the policies of the Act.

Having found the Union was the designated representative of Respondent's employees in an appropriate unit on July 2, 1966, and that Respondent, by refusing to bargain with it and by engaging in unfair labor practices aimed at destroying its majority, discloses a disposition to evade his obligation to bargain, it is found that a simple cease-and-desist order would not prevent Respondent from profitting from his unlawful conduct and that only a bargaining order can restore, as nearly as possible, the situation which would have obtained but for Respondent's unfair labor practices. 39/ Accordingly, it will be recommended that Respondent bargain with the Union as the collective-bargaining representative of his employees in the indicated appropriate unit and, if an agreement is reached, embody such agreement in a signed contract.

39/ Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177; D. H. Holmes Co. v. N.L.R.B., 179 F. 2d 876, 879-880 (C.A. 5; 1950); Piasecki Aircraft Corp. v. N.L.R.B., 280 F. 2d 575, 591-592 (C.A. 3; 1960), cert. denied 364 U.S. 933; N.L.R.B. v. Delight Bakery, Inc., 353 F. 2d 344, 347 (C.A. 6; 1965); Flomatic Corp., 147 NLRB 1304, 1307.

Having found that Respondent altered the terms and contitions of employment of his employees without bargaining in good faith with the Union concerning such changes at a time when the Union was the designated collective-bargaining representative of his employees, it will be recommended that he cease and desist from any repetition thereof.

Upon the basis of the foregoing Supplemental Findings of Fact and upon the entire record in this case, I reach the following

Supplemental Conclusions of Law

The Conclusion of Law numbered "5" in the Preliminary Decision herein is hereby renumbered "7," and the following conclusions inserted immediately after the Conclusion of Law numbered "4:"

5. On July 1, 1966, and thereafter the Union was and is the exclusive representative for collective-bargaining purposes of Respondent's employees in the unit described as follows:

> All production and maintenance employees at the Respondent's plant, including instrument men and plant-clerical employees, but EXCLUDING office-clerical employees, casual and temporary employees, professional employees, guards, and supervisors within the meaning of the Act; and, employees of other operations of George A. Angle.

which was and is a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act;

6. By refusing, on and after July 1, 1966, to bargain in good faith with the Union and, on or about September 21, 1966, by changing the terms and conditions of employment of his employees without bargaining in good faith with the Union concerning such changes, Respondent has refused to bargain collectively with the representative of his employees and has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

SUPPLEMENTAL RECOMMENDED ORDER

Upon the basis of the above Supplemental findings of fact and Supplemental conclusions of law, and upon the entire record in this case, it is recommended that George A. Angle, doing business as Kansas Refined Helium Company, his agents, successors, and assigns, shall, in addition to the recommendations set forth in the Recommended Order attached to the Preliminary Decision herein:

1. Cease and desist from:

(a) Refusing to bargain collectively with Oil, Chemical and Atomic Workers International Union, AFL-CIO, as the representative of his employees in the appropriate unit described in the Supplemental Conclusion of Law numbered "5;"

(b) Changing the terms and conditions of employment of the employees in said unit without bargaining concerning such changes with the said Union; Provided, however, that nothing herein shall be construed to require Respondent to cancel or withdraw any benefit heretofore granted such employees.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Upon request, recognize and bargain collectively with Oil, Chemical and Atomic Workers International Union, AFL-CIO, as the exclusive representative of the employees in the appropriate unit set forth in the Supplemental Conclusions of Law above;

(b) Post at his plant at Otis, Kansas, copies of the notice attached hereto and marked Appendix "B." 40/ Copies of said notice,

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40/ If these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of the United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

to be furnished by the Regional Director for the Seventeenth Region, shall, after being signed by him, be posted and maintained by him for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Seventeenth Region, in writing, within 20 days from receipt of this Decision, what steps he has taken to comply herewith. 41/

Dated at Washington, D. C. December 20, 1967.

/s/ Sidney D. Goldberg
Trial Examiner

41/ In the event that these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Seventeenth Region, in writing, within 10 days from the date of this order, what steps he has taken to comply herewith."

APPENDIX B

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE SUPPLEMENTAL RECOMMENDED ORDER OF A TRIAL EXAMINER OF THE

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT

I HEREBY NOTIFY MY EMPLOYEES AT THE KANSAS REFINED HELIUM COMPANY PLANT THAT:

I WILL, upon request, bargain in good faith with OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, as the exclusive collective-bargaining representative of my employees in the unit described as follows:

> All production and maintenance workers at the KANSAS REFINED HELIUM plant, including instrument men and plant-clerical employees, but excluding office-clerical employees, casual and temporary employees, professional employees, guards, and supervisors within the meaning of the Act, and employees of other operations of George A. Angle.

and, if an agreement is reached, will embody that agreement in a signed contract.

I WILL NOT change the terms and conditions of employment of any of my employees in the above-described unit without bargaining in good faith with the said union concerning such changes: but nothing in the Recommended Order requires that any benefits heretofore conferred on any employee in said unit shall be withdrawn.

All my employees are free to become and remain, or to refrain from becoming or remaining, members of OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, or any other labor organization.

GEORGE A. ANGLE, doing business as KANSAS REFINED HELIUM COMPANY

(Employer)

Dated---------- By ----------
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 610 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106 (Tel. No. FR 4-5181).

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

GEORGE A. ANGLE, doing business
as KANSAS REFINED HELIUM COMPANY,

Respondent

and

Cases 17--CA--3021
17--CA--3021--2

OIL, CHEMICAL AND ATOMIC
WORKERS INTERNATIONAL UNION,
AFL--CIO,

Charging Party

Gerald A. Wacknov, Esq., for the
General Counsel.
Patrick F. Kelly, Esq., of
Wichita, Kans. (Frank and
Kelly), and Joseph A. Lynch,
Jr., Esq., of Kansas City,
Kans., for the Charging Party.
Marvin J. Martin, Esq. (Martin,
Wooley and Churchill), and
Robert Martin, Esq. (Martin,
Porter, Pringle, Schell and
Fair), of Wichita, Kans., for
the Respondent.
Robert N. Partridge, Esq.
(Foulston, Siefkin, Powers,
Smith and Eberhardt), of
Wichita, Kans., for the
witness Thomas E. Garrett.

TRIAL EXAMINER'S DECISION AND REPORT

SIDNEY D. GOLDBERG, Trial Examiner: The question for decision at this time is whether Thomas E. Garrett, whose testimony the Board has directed me to take herein, is physically able to testify. I find that he is not.

1. History of the case

This proceeding, commenced by the issuance of a complaint alleging that George A. Angle, doing business as Kansas Refined Helium Company, had violated Section 8(a)(1), (3), and (5) of the Act, came on for trial before me in Great Bend, Kansas, January 18--20, 1967, immediately following the trial, before the United States District Court for the District of Kansas, at Wichita, of an application for ancillary injunctive relief under Section 10(j) of the Act. Garrett, who is one of the employees alleged to have been dismissed in violation of Section 8(a)(3) of the Act, testified before the court but did not testify before me. Respondent made no particular point during the trial before me concerning Garrett's failure to testify and made no effort to call him as a defense witness.

On February 14, 1967, Respondent filed a motion "to reopen record and for additional hearing." The motion stated that, on January 21, Respondent's counsel, Marvin Martin, together with one of his associates, Stanley Churchill, and Patrick Kelly, attorney for the charging Union, had conducted an interview with Garrett, which was recorded, and a transcript of the recording was attached to the motion.

The motion stated that the recording shows that some of the testimony given by Garrett and others before the United States District Court in the injunction proceeding was false and it argued that the giving of such false testimony by Garrett might justify the Board in denying his reinstatement. It also stated that Garrett's testimony concerning the status of senior operators, in a deposition taken in connection with the injunction proceeding, was incorrect and that Garrett could give additional evidence on that point. Accordingly, the motion requested that the record be reopened for additional hearing on those matters.

By order dated March 8, 1967, I denied the motion, pointing out that a motion to reopen, made to the United States District Court, 1/

1/ That motion was based upon the same transcript of the recorded interview submitted to me.

was still undetermined and that the court was the proper forum, at least initially, for the relief requested. The order also noted that Garrett's statements, in the transcript of the interview, were vague and inconclusive on the authority of the senior operators, that the evidence on this subject was not newly discovered, so that Respondent could have called Garrett as a witness and, finally, that Garrett's testimony on this subject would be cumulative. 2/

2/ On april 5, 1967, Judge Brown rendered his decision granting the application for an injunction. He disposed of Respondent's motion to reopen the record in the following passage:

> Since the hearing in this case, respondent filed a motion to reopen the record and to renew discovery proceedings concerning depositions from Garrett and Sims, and such other persons as should appear necessary. In support of the motion, respondent offers a transcription of a conversation of the witness Tom Garrett with Mr. Martin, attorney for respondent, and Mr. Kelly, attorney for the Union. Garrett apparently requested the interview to correct statements in his testimony which he felt, upon reflection, were not true. We have examined that transcription and Garrett's testimony at the hearing. We find no variances which are material to our decision to grant injunctive relief. Garrett stated in the interview that he did not know who wrote any of the anonymous letters. He did make certain statements which tend to discredit the testimony of Sims concerning those letters. Much emphasis has been placed on these letters, more, we think, than they deserve. They contained no threats against any persons or against property of the respondent. They were not distributed by the anonymous writer at large throughout the plant, but mailed only to Angle. The writer (or writers) criticized management personnel at the plant. There was no personal criticism or abuse of Angle himself. The letters purported only to advise Angle of a difficult situation at the plant created by certain of his supervisory personnel. The letters reflect no attempt to create strife or discontent among the men, nor were they so used. If anything, they were merely symptomatic of such unrest.
>
> The motion to reopen is denied.

My Preliminary Decision, which dealt with the allegations of interference and unlawful discharge, was issued September 12, 1967; it found that the senior operators were not supervisory employees and that Garrett, among others, had been unlawfully discharged.

Respondent filed exceptions to the Preliminary Decision, specifically excepting to the order of March 8, 1967, which denied the motion to reopen the record. The brief submitted to the Board in support of the exceptions states that "Garrett failed to appear for trial" and argues that this alone "is sufficient for a presumption against him." The argument nevertheless continues by stating that Garrett should also be denied reinstatement by reason of his "activity" in the injunction proceeding, which is particularized as having "spoke[n] witness for the Board in the prosecution case." 3/

By order dated January 30, 1968, the Board stated that:

> . . . having duly considered the Respondent's exceptions and brief, and the entire record in the case, is of the opinion that Respondent's exceptions to the Trial Examiner's denial of its motion to reopen and remand has merit. Accordingly,
>
> IT IS HEREBY ORDERED that the record herein be reopened and the case remanded to the Trial Examiner for the purpose of taking Garrett's testimony, as it bears on the substantive issues and issues of credibility in the case, and such other evidence as may be offered by the General Counsel and Charging Party in rebuttal thereof.

2/ (Continued) The petitioner is entitled to injunctive relief.

The Court of Appeals for the Tenth Circuit affirmed Judge Brown's order on August 28, 1967m with modifications only as to employees Sims and Rodgers (382 F. 2d 655).

3/ Presumably in deference to the District Court decision granting the injunction, and the affirmance thereof by the Court of Appeals on August 28, 1967, the brief, which was filed October 20, 1967, goes no further than to state that Garrett, in his recorded interview "spoke of 'perjury' and a 'direct lie.' "

2. Efforts to obtain Garrett's testimony

The first effort to set a hearing pursuant to the Board's order was the suggestion of the date March 21 by the General Counsel. This date was not convenient for Respondent's counsel and, by order of March 22, 1968, I directed that a hearing be held on April 24, 1968.

On April 24 the matter was called for hearing before me in Wichita, Kansas. The General Counsel, the Charging Party, and the Respondent were all represented. While Garrett was said to be personally present, he was represented by counsel who reported that he had talked with Garrett's personal physician; that the physician had informed him [4/] that Garrett was recognized as an "emotionally unstable person," and that for him to take the witness stand might be harmful to his health, "destroying" him and his usefulness to his family. After discussion among counsel, it was agreed that Garrett would submit to psychiatric examination in the near future, May 4 to 7 was suggested, with the possibility of a report about May 15. Respondent's counsel stated that, if they had the psychiatric report about that date, they could study it, consult with the examining psychiatrist if necessary, and then determine the course they wished to pursue. Accordingly, I continued the hearing to June 11, 1968, with a direction that copies of the psychiatric report on Garrett be transmitted, as soon as completed, to all counsel in the case.

On June 6, a motion was filed on behalf of Garrett, stating that he had been under hospitalization for treatment and psychiatric evaluation, and that a negative report on his condition was expected in the near future. Pending receipt of this report, application was made for a continuance of the hearing. Respondent interposed no objection and the hearing was continued to July 30.

[4/] Respondent's counsel withheld any objection to counsel's statements concerning this conversation.

The report of the examining psychiatrist, Austin J. Adams, M.D., was distributed to all counsel about June 17. It concluded, on the basis of Garrett's history and the psychological tests which had been given, that Garrett suffered from:

> . . . a rather severe characterological disturbance of long duration . . . in which there is disorganization of the thinking process manifested by hallucinations and delusions that preclude discernment of what is real and what is fantasy.

Dr. Adams also stated that, in his opinion, the stress of a court appearance would aggravate Garrett's illness, which had subsided somewhat since his hospitalization.

On the basis of the psychiatric report, the General Counsel moved, on July 2, that the hearing be ordered closed and the case transferred to the Board. Garrett, through counsel, joined in the request. Respondent opposed these motions, pointing out that another psychiatric examination of Garrett had been ordered by the United States District Court [5/] and Respondent requested that the hearing be conducted as scheduled to take evidence from both psychiatrists, as well as to subject their testimony to cross-examination. Accordingly, by order dated July 26, I denied the motions to close the hearing and directed that it be resumed on September 10, 1968; that Garrett appear and testify

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5/ This examination was ordered by the court in connection with Respondent's motion, filed June 14, for modification of the injunction to relieve Respondent from obedience to its provision requiring employment of Garrett. It appears from the record herein that the Respondent suggested, and the court appointed, Dr. C. J. Kurth as the examining psychiatrist; that Dr. Kurth, as well as Dr. Adams, testified before the court on August 30 concerning Garrett's ability to perform his duties at Respondent's plant and that the motion was denied.

if able to do so; and that, if he should be unable to testify, witnesses be produced to testify concerning his condition.

3. The evidence concerning Garrett's condition

The hearing resumed on September 10 before me at Wichita, Kansas, with all parties, and Garrett, represented by counsel. [6/] Garrett's counsel stated that, as noted at the April 24 hearing, Garrett's work schedule called for a 4-day layoff from May 4 through 7, and that arrangements had been made for his examination during that period; but that Garrett did not report for examination as scheduled; that, however, he was located several days later at a State hospital, confused and distressed; that he was transferred to another hospital and to the care of the family-chosen psychiatrist, Dr. Austin J. Adams, who examined and treated him.

Dr. Adams [7/] confirmed counsel's statement that Garrett had not reported for examination as scheduled; that he found him in the State hospital where he had been for 2 or 3 days; that on May 11 he transferred him to another hospital and kept him under his own care and examination until June 4. After that date, he released Garrett from the hospital but continued to see him at his office until July 11.

When he began his examination of Garrett in May, Dr. Adams testified, he found him tense and anxious, feeling that he was being watched and, at least symbolically, threatened with hanging; he was

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6/ In addition to the testimony of witnesses and statements of counsel in the sessions before me (the transcript of which has been corrected by order dated December 15, 1968), I have drawn on the official record of the proceedings ancillary to this case in the District Court and the Court of Appeals, of which I take official notice.

7/ Dr. Adams' qualifications were not questioned. He testified that he had been a practicing physician since 1937; that he had trained for 2 years as a resident in psychiatry at the Menninger Clinic; that he had further training in psychiatry at the National Naval Medical Center; that he had practiced as a psychiatrist in the United States Navy; and that he was engaged in practice, as a specialist in psychiatry, in Wichita.

concerned about his having testified in court and he was uncertain whether he had acted correctly. Dr. Adams continued to test and treat him, diagnosing his illness as a condition of "schizophrenia reaction" of "paranoid type." He also concluded that the aggravated state of Garrett's illness was due to his involvement in the litigation and his concern over whether he had testified truthfully or "injured" anyone.

At the completion of the course of treatment in the hospital, Dr. Adams testified, Garrett's symptoms had subsided sufficiently so that, considering his own safety and the safety of others, he could be released from ths hospital. Dr. Adams stated, however, that he did not consider Garrett as "cured" but only in a "social remission;" i. e., with the problem latent and a flareup possible.

Dr. Adams testified that he felt that the prospect of testifying was "a precipitating factor" in the condition of illness he found in Garrett and that, in his opinion, if Garrett were required to testify,

> . . . the possibility of precipitating a return of the illness would be so great that I would state that I felt he should not testify.

Dr. Adams also testified that Garrett was able to work and that engagement in his normal routine would have a therapeutic effect because he liked his work [8/] and because the performance of his duties at the plant was not a factor contributing to his condition.

8/ Garrett had been reinstated, pursuant to the injunction, on August 14, 1967, and, at the April 24, 1968, hearing in this case, Respondent's counsel stated that his performance was satisfactory. Garrett continued to perform his duties through May 2, but, when he reported for duty on June 10, some days after his release from the hospital, the plant manager refused to permit him to go to work, stating that his "reinstatement" was a matter to be handled by the attorneys for the parties. On June 14, Respondent filed the motion for modification of the injunction referred to above. At the close of the hearing on August 30, Judge Brown denied the motion and Garrett was restored to duty September 7. He was still at work on September 14 when the hearing in this matter was completed.

Dr. Adams testified that, in his professional opinion, for Garrett to maintain the emotional stability he had attained, it would be necessary for him to continue to take the prescribed medication and to remain under observation. Under those conditions and without any unsettling influences, he felt the chances of Garrett having a recurrence would be reduced to a minimum. If, however, he should be required to testify in this case, Dr. Adams gave it as his opinion that there would be great danger of his falling into another similar condition, in the throes of which his memory would be blocked or distorted and he would be unable to distinguish between fact and fantasy. 9/

Respondent called as a witness Dr. C. J. Kurth, the psychiatrist he had suggested to the District Court in connection with the motion to modify the injunction. 10/

Dr. Kurth testified that he saw Garrett once, when he examined him on July 15, 1968; that the examination included psychological tests; that he took a history from Garrett which disclosed previous treatment for a similar condition in 1963; and that he examined the records of Garrett's 1963 hospitalization. He concluded that Garrett's personality was schizophrenic but stated that, at the time of the examination, Garrett was functioning in the "mid-high-average I. Q. range" and was not in a "psychotic state." Accordingly, in Dr. Kurth's opinion, Garrett would have been capable of testifying at that time.

9/ Respondent's counsel, during his cross-examination of Dr. Adams, called for a report made by Dr. Adams to Garrett's attorney. It was produced and examined by Respondent's counsel who, although specifically invited to make it part of the record, did not do so. I infer, therefore, that this report is consistent with Dr. Adams' testimony.

10/ Dr. Kurth's qualifications were not challenged. He testified that he had been a physician since 1935; that he had been trained in psychiatry during residencies at hospitals in Kansas, California, and at the Mayo Clinic in Rochester, Minnesota; and that he had been a specialist in psychiatry since 1940.

On cross-examination, however, Dr. Kurth conceded that placing Garrett on the witness stand could break down the "adjustment" he had shown during the examination and precipitate a "psychotic episode." Moreover, Dr. Kurth's report to Garrett's counsel, dated July 31, 1968, and based upon the same examination, states that:

> 1. At the present time, Mr. Garrett appears to be in a reasonable state of adjustment. This is probably due to the fact that his condition is in remission and that the medicine, which is being supplied, helps considerably to keep him adjusted.
> 2. To place him on a witness stand could certainly break down his adjustment mechanism, shatter his defense and might even precipitate a psychotic episode. I do not anticipate this picture will change much in time.

These are the comments that are followed by, and show the contest of, Dr. Kurth's statement, which is quoted in Respondent's brief, that:

> . . . if he is ever going to need to go on the witness stand, or a deposition be taken, I feel that he is currently in as good a condition of adjustment as one might anticipate in the foreseeable future.

This statement, in context, falls far short of an opinion that Garrett is in a satisfactory condition to testify. Moreover, the paragraph immediately preceding it clearly states that Garrett's present condition of precarious balance cannot be expected to improve in the foreseeable future.

Dr. Kurth testified that he had not been informed of Garrett's conduct immediately following his testimony in the trial of the injunction proceeding in January--February 1967 and that he did not know of Garrett's conduct in early May 1968, when he was confronted with the probability of being called to testify pursuant to the Board's remand order. After learning of this incident, Dr. Kurth testified that in his

opinion, if Garrett were to receive notice that he would be required to testify again concerning the labor dispute and that his earlier testimony on this matter would be subjected to reexamination, these influences would produce a condition of anxiety, the intensity of which he could not predict.

Respondent has pointed out that Garrett testified before Judge Brown in the District Court on September 13, 1967, on a motion to adjudicate Respondent in civil and criminal contempt of the Section 10(j) injunction, and that there was no evidence that his testifying produced any psychological reaction at that time or subsequently thereto. 11/

It appears beyond doubt that, since the events of June to September 1966 which form the basis for the findings of unfair labor practices herein, Thomas E. Garrett has twice suffered serious emotional and psychological disturbances connected with his testifying concerning them. Both Dr. Adams and Dr. Kurth testified that, in their professional opinion, there is a strong likelihood that, if faced with a requirement that he testify again concerning those events, Garrett's emotional stability would again be upset to the extent that he would be unable to testify reliably and that his general psychological condition might again become psychotic.

Other than the fact that Garrett did testify, in September 1967, on different, contemporaneous, and relatively undisputed matters, there is no evidence now before me to contradict the expert testimony of these

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11/ At Respondent's request, I have read Garrett's testimony at that hearing, not to make any finding upon it, but only to determine whether there are any superficial indications reflecting on his ability to testify. I find from the transcript of Garrett's testimony that it dealt almost exclusively with Garrett's return to work pursuant to the injunction and that questions by the General Counsel concerning Garrett's original training in the plant in 1966 were objected to by Respondent's Counsel as "an attempt to go back into his case in chief." Moreover, I find nothing in the transcript contributing toward a determination of whether Garrett would be able to give reliable testimony concerning the matters at issue in this unfair labor practice case.

two psychiatrists concerning Garrett's probable reaction if required to testify at a reopened hearing on the unfair labor practices. Were this a criminal prosecution, in which the applicable standard of proof is "beyond a reasonable doubt," I might be constrained to hold the fact that he testified in September 1967, without suffering a breakdown, sufficient to create a reasonable doubt that a breakdown would follow if he were directed to give testimony in accordance with the order of remand. Greater weight than this, however, I cannot give to this fact, as opposed to the credible testimony of the two psychiatrists who agreed that, to require Garrett to testify again, concerning both the activities held herein as unfair labor practices and his former testimony on the subject, would probably precipitate a situation in which any testimony he might give would not only be unreliable but from which he might suffer serious psychological injury. Since I am convinced that the decision on the matter before me, like the decision of other issues before the Board, is properly to be determined by a fair preponderance of the evidence, I cannot avoid the conclusion that the undisputed evidence of the two psychiatrists concerning the likely effect of requiring Garrett to testify far outweighs the slight possibility that he might testify competently and without serious psychological aftereffects.

From the foregoing it follows, and I find, that Thomas E. Garrett is now physically unable to testify as prescribed in the Board's order and that his condition is not likely to improve in the foreseeable future. Accordingly, I return this matter to the Board with the recommendation that it rescind the order of January 30, 1968, and that its consideration of Respondent's exceptions to the Trial Examiner's Preliminary Decision proceed upon the record now before it.

Dated at Washington, D. C. December 30, 1968.

/s/ Sidney D. Goldberg

DECISION AND ORDER

On September 12, 1967, Trial Examiner Sidney D. Goldberg issued his Preliminary Decision in the above-entitled cases finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Preliminary Decision. [1/] Thereafter, the Respondent and the Charging Party filed exceptions to the Trial Examiner's Preliminary Decision, and supporting briefs, and the Charging Party filed a request for oral argument. [2/]

Previously, on March 8, 1967, Respondent filed with the Trial Examiner a motion to reopen the record and for further hearing to take the testimony of Thomas E. Garrett, an employee who allegedly gave false testimony in a Board instituted court proceeding, bearing on certain credibility resolutions and recommendations of the Trial Examiner. By Order dated March 15, 1967, the Trial Examiner denied Respondent's motion. The Respondent having duly excepted to the Trial Examiner's rulings in that regard, the Board, by Order dated January 30, 1968, directed that the record be reopened and the case remanded to the Trial Examiner for the purpose of taking Garrett's testimony. On December 30, 1968, Trial Examiner Sidney D. Goldberg issued his Decision and Report finding, on the basis of expert medical testimony, that Garrett was, and would continue to be, physically and emotionally unable to testify without substantial risk to his mental stability and

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1/ Decision with respect to Section 8(a)(5) allegations of the complaint was deferred by the Trial Examiner.

2/ The Respondent's request for oral argument before the Board is hereby denied as the record and briefs adequately present the issues and positions of the parties.

recommending that the Board rescind its Order of January 30, 1968, and proceed to its consideration of Respondent's exceptions to the Trial Examiner's Preliminary Decision upon the record now before it. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and Report, and a supporting brief, and the General Counsel filed an answering brief. 3/

On December 20, 1967, Trial Examiner Sidney D. Goldberg issued his Supplemental Decision in the above-entitled cases finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8(a)(5) of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Supplemental Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Supplemental Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearings and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decisions, and the entire record in these cases, including

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3/ In view of Garrett's mental condition, his testimony, if taken, would not add or detract from the record.

the exceptions and briefs, and hereby adopts the findings, conclusions,[4] and recommendations[5] of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Orders of the Trial Examiner, and orders that Respondent, George A. Angle, d/b/a Kansas Refined Helium Company, Otis, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Orders.

IT IS FURTHER ORDERED that the Board's Order of January 30, 1968, remanding the case to the Trial Examiner for the purpose of taking further testimony be, and it hereby is, rescinded.

Dated, Washington, D. C. June 25, 1969.

John H. Fanning, Member

Howard Jenkins, Jr., Member

Sam Zagoria, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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[4] In essential agreement with the Trial Examiner, we conclude that Respondent violated Section 8(a)(5) of the Act by rejecting the Union's bargaining demand and, thereafter, upon the Union's filing of a petition for an election, embarking upon an antiunion campaign marked by massive and systematic violations of Section 8(a)(1) and (3) of the Act. Those violations, which included, inter alia, coercive interviews with virtually every employee, threats of plant closure and discharge for union activity, and the discharge of six union supporters, were obviously designed to undermine the Union's support, destroyed the conditions necessary to the holding of a free election on the Union's petition, and made the holding of a fair election in the future unlikely. For these reasons, we conclude that, in order to protect the statutory rights and interests of employees and to remedy the unfair labor practices committed, it is

4/ (Continued) essential that the Respondent be ordered to recognize and bargain with the Union as the statutory representative of its employees for the purposes of collective bargaining. N. L. R. B. v. Gissel Packing Company, U. S. (June 16, 1969).

5/ We agree with the Trial Examiner's recommendation that Sims be reinstated because there is no evidence to show conclusively that Sims engaged in misconduct.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Seventeenth Region

In the Matter of:	
GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY,	
and	Case No. 17-CA-3378
OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO.	

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Oil, Chemical and Atomic Workers, AFL-CIO

Case No. 17-CA-3378

10.18.67	Charge, filed.
10.30.67	Amended Charge, filed.
12. 4.67	Complaint and Notice of Hearing, issued.
12.12.67	George A. Angle, d/b/a Kansas Refined Helium Company (hereinafter called Company), Answer to Complaint and Notice of Hearing, dated.
1.19.68	Company's Telegram requesting postponement of hearing, dated.
1.19.68	Petitioner's[1/] Telegram opposing Company's postponement of hearing, dated.
1.19.68	Regional Director's telegraphic Order denying Company's postponement of hearing, dated.
1.23.68	Hearing opened.
1.24.68	Hearing closed.
2.15.68	Company's Motion to hold record open and for additional time for filing brief, with attachments, received.

[1/] Petitioner herein was Charging Party before the Board.

2.15.68 General Counsel's Telegram opposing Company's Motion to hold record open and for additional time for filing brief, received.

2.16.68 Trial Examiner's Telegram denying Company's Motion to hold record open and for additional time for filing brief, dated.

2.19.68 General Counsel's Motion to correct the transcript, dated.[2/]

7. 2.68 Trial Examiner's Decision, issued.

7.22.68 Petitioner's Exceptions to the Trial Examiner's Decision, received.

7.24.68 Company's Exceptions to the Trial Examiner's Decision, received.

7.25.68 General Counsel's Exceptions to the Trial Examiner's Decision, received.

6.25.69 Decision and Order issued by the National Labor Relations Board.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

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Conference Room
Federal Building
Great Bend, Kansas
Tuesday, January 23, 1968

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

GEORGE L. POWELL, Trial Examiner.

APPEARANCES:

GERALD A. WACKNOV, Esq., 601 East Twelfth Street, Kansas City, Missouri, appearing as counsel for General Counsel.

[2/] No action appears in Board files.

MARVIN J. MARTIN, Esq., of the firm of Martin, Wooley & Churchill, 458 North Market, Wichita, Kansas, appearing on behalf of George A. Angle, d/b/a Kansas Refined Helium Company, the Respondent.

ROBERT MARTIN, Esq., of the firm of Collins, Martin, Pringle, Schell & Burns, 1400 Plaza Building, Wichita, Kansas, appearing on behalf of George A. Angle, d/b/a Kansas Refined Helium Company, the Respondent.

PATRICK F. KELLY, Esq., Union National Building, Wichita, Kansas, appearing on behalf of Oil, Chemical and Atomic Workers International Union, AFL-CIO, the Charging Party.

JAY DEE PATRICK, Esq., 2001 Empire, Joplin, Missouri, appearing on behalf of Oil, Chemical and Atomic Workers International Union, AFL-CIO, the Charging Party.

* * * * *

TRIAL EXAMINER: The position of respondent also is that Arel Rodgers is a supervisor, is that correct?

MR. ROBERT MARTIN: Yes, sir, that is our position in the United States courts, and I suppose our position here. Our position here, of course, was that he was brought into the plant for reinstatement, in accordance with the court order. He was being trained in a supervisory capacity; actually, he was in training at the time of the discharge, because the Circuit Court of Appeals' order became final the day before. He was in training and not fully performing the duties.

* * * * *

MR. WACKNOV: I would like to go ahead with my opening statement.

TRIAL EXAMINER: Very well.

MR. WACKNOV: The subject of this case is Arel Rodgers, who has been an employee of Kansas Refined Helium Company since approximately April or May 1965, when the plant first opened. On September 20, 1966, Mr. Rodgers was discharged by the respondent, and a Trial Examiner's decision has found that Mr. Rodgers was discharged in violation of the Act. On that date of September 20, 1966, not only Mr. Rodgers, but five others were also fired along with him. The Trial Examiner found them, also, to be discharged in violation of the Act. Later on I am going to give you the citations of the various decisions involved here and move that the Trial Examiner take official notice of these various decisions.

The discharge of the six employees, among other things, was the subject of a 10(j) injunction under the Act. The District Court for the District of Kansas, on April 5, 1967, issued its order granting a temporary injunction and, among other things, ordering the reinstatement of these six employees should they desire to go back to work prior to any Board decision. On July 19, 1967, under the injunction order, Mr. Arel Rodgers, subject of this case, was reinstated and was allowed to go back to the plant by the respondent. On July 20, 1967, the National Labor Relations Board filed a petition for civil and criminal contempt of the order of the District Court. On August 9, 1967 –

TRIAL EXAMINER (interrupting): On what was that based?

MR. WACKNOV: It was based on the company's failure to abide by the terms of the injunction order and, more particularly, failure to reinstate the particular individuals who wanted reinstatement according to the injunction order of the District Court.

TRIAL EXAMINER: You mean other than Arel Rodgers?

MR. WACKNOV: Everybody.

TRIAL EXAMINER: Arel Rodgers was reinstated.

MR. WACKNOV: Yes, but to give you an idea of the problem without going into it, the injunction order with the District Court issued on April 5, 1967; Mr. Rodgers was not reinstated until July 19, 1967, so there is a period of three and a half months during which the injunction order of the court was not being complied with, among other things. This is a very small part of the contempt proceedings.

* * * * *

25 MR. MARVIN MARTIN: At the time of the contempt action the Federal Circuit Court of Appeals' decision had not been entered. Contempt action began in July, and a series of court conferences, pre-trial
26 conferences; conferences concerning interrogatories and other matters were held by the court from time to time during the period of July, August and September. * * *

* * * * *

39 Whereupon,

AREL RODGERS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

40 TRIAL EXAMINER: Give us your name and spell both of your names.

THE WITNESS: Arel Rodgers, A-r-e-l R-o-d-g-e-r-s.

DIRECT EXAMINATION

Q. (By Mr. Wacknov) Were you formerly employed by Kansas Refined Helium Company? A. Yes.

Q. When did you first begin working for the Company?
A. In 1965, July.

Q. Approximately July? A. Approximately.

Q. Now, when you first began working for the employer, was the plant in operation? A. No.

Q. In what particular stage was it when you first started working there? A. The final stages of construction.

Q. And do you know approximately when the plant began operating? A. There were numerous attempts to make a start-up and, perhaps in September, I am not really sure, I don't remember.

Q. Of 1965? A. '65.

Q. Were you involved in the initial start-up of the plant?
A. Yes.

41 Q. In what capacity did you work there? A. Senior operator.

Q. And as a senior operator what did you do? A. My job was to run a control panel and to direct the other two junior operators and keep them on a string.

Q. When were you terminated originally? A. September 20, '66.

Q. And has that termination been the subject of various National Labor Relations Board proceedings? A. Yes, it has.

TRIAL EXAMINER: Is that in the Sid Goldberg case?

MR. WACKNOV: Yes, sir.

Q. (By Mr. Wacknov) Directing your attention to July 19, 1967, did you receive any — did you return back to the plant on or about that date? A. Yes.

Q. Now, did you receive any letter prior to that offering you reinstatement back to the plant? A. Yes, I did.

MR. WACKNOV: Mark this as General Counsel 2.

(The document above-referred to was marked General Counsel's Exhibit No. 2 for identification.)

Q. (By Mr. Wacknov) I show you what has been marked as General Counsel's Exhibit 2; is that the letter dated July 17, 1967 you received offering you your job at the plant?

42 A. Yes, it is.

Q. And pursuant to this letter, did you return to work at the plant? A. Yes, I did.

Q. What date did you return to work? A. Around the 19th, I believe.

Q. Of what? A. Of July.

Q. 1967? A. 1967, yes, sir.

MR. WACKNOV: At this time I offer General Counsel's Exhibit No. 2 into evidence.

MR. ROBERT MARTIN: No objection.

TRIAL EXAMINER: It will be admitted.

* * * * *

Q. (By Mr. Wacknov) Mr. Rodgers, directing your attention to September 19, 1967, did you go to work on that date at the Kansas Refined Helium plant? A. Yes.

Q. Did you have any discussion with any supervisor regarding the prior unfair labor practice case before Trial Examiner Goldberg?

43 A. Yes, I did.

Q. Approximately what time of day was this, do you recall?

A. I think it was probably around 2 or 2:30.

Q. In the afternoon? A. In the afternoon.

Q. What shift were you on at this time? A. I was still on daylights. I had never been put on shift.

Q. What were the hours of the daylight shift? A. 8 to 4.

Q. 8 a.m. to 4 p.m.? A. Yes.

Q. How did this conversation begin — strike that.

Who was the supervisor you talked to? A. Mr. Henry Tyler.

Q. Who is Mr. Henry Tyler? A. The plant manager.

Q. Is he still the plant manager? A. Yes.

TRIAL EXAMINER: Spell his last name.

MR. WACKNOV: T-y-l-e-r.

Q. (By Mr. Wacknov) How did this conversation between you and Mr. Tyler begin? A. Well, I was standing in the hallway in front

of Mr. Tyler's office and he came by and I asked him if he had a few minutes, I would like to talk to him, and he said he did.

44 Q. What happened after that? A. He invited me in his office and we sat down.

Q. Do you recall what he said as far as the two of you sitting down? A. Well, he just said he had a few minutes and to sit down.

Q. And so you both sat down? A. Yes.

Q. Then, did you say something to Mr. Tyler? A. I told him that I would like to know if this Goldberg ruling had to be posted. He said, "Well, I don't know." I said, "Well, I didn't know either but I was under the impression that it did." He said, "Well, I am not sure but I think if it was supposed to be posted we would post it because we have posted everything in the past." And I said, "Well, I don't know whether it does have to be. Do you know for sure"? Then, he said, "No, I don't know for sure." I said, "Well, it says in there if we have any questions we should call and ask and they'd be glad to tell us. Would it be all right if I called"?

Q. Call who? A. Call Kansas City, that is what it said on the bottom of the appendix.

Q. Of what? A. The Goldberg ruling.

Q. Did you have Mr. Goldberg's ruling with you at the time? A. No.

45 Q. Go on with your discourse of the conversation. A. I asked him if I could call and he said yes, it would be all right, so I went to the car and got the copy of the ruling.

Q. Where was your car? A. Setting right at the gate where I come into the plant.

Q. You got a copy of the ruling, is that correct? A. Yes.

Q. What did you do after that? A. I came back in to the plant and went into Mr. Harry Harms' office and started to pick up the phone.

Q. Who is Mr. Harry Harms? A. He is the plant engineer.

Q. And have you ever been given permission to use the phone by Harry Harms? A. Yes.

Q. Explain this. A. Well, I worked in — I was assigned Harry Harms' office when I first came back to work.

Q. When was this, what date? A. Well, it was September. Actually, when I first came back to work it would be in July, excuse me.

Q. What did Mr. Harms say about your use of the phone? A. I had to call one time, I had to call home for some reason, and I asked him would it be all right to use his phone; he said it sure would, and anytime I needed to use it feel free to use it.

46 Q. I think I stopped you when you said you were in Mr. Harms' office using the phone. What happened then? A. I got to thinking about it; there was no one in here, so I had been to check and I stepped out in the hall and I was going to ask and when I stepped in the hall there was Mr. Tyler. I said, "Would it be all right to use this phone in here"? He said, "No, you can't call." I said, "Do you mean I can't call now or I can't call"? He said, "I mean you can't call now." I said, "Well, it says right here that if we have any questions that we are supposed to call."

Q. Did you point out something to Mr. Tyler? A. At the bottom of that appendix it tells where you are supposed to call.

Q. Did you have that with you? A. Yes, I did.

* * * * *

Q. (By Mr. Wacknov) I hand you what has been marked as General Counsel's Exhibit No. 3, which is the decision of Trial Examiner Goldberg. Is this a copy of what you had in your hand at the time and a copy of what you showed to Mr. Tyler? A. Yes.

* * * * *

47 Q. (By Mr. Wacknov) I hand you this General Counsel's Exhibit No. 2, Mr. Rodgers; what particular part of that did you point out to Mr. Tyler at the time?

48 A. Well, this part right here at the bottom.

Q. You are talking about at the bottom of the appendix to the Trial Examiner's decision concerning the posting of the decision and if you have any questions you should call the Board's Regional Office and it gives the address and telephone number? A. Right.

Q. Now, what did Mr. Tyler say? A. He said, "I don't even know if this is the right thing." And he said, "I am going to call Wichita." I said, "Well, after you call Wichita, if they say it's all right, can I go ahead and call then"? He said, "As it stands now, you can't call." I said, "O.K.," and went back to the control room.

Q. You went back to your job? A. I went back to the control room, yes.

Q. From the time you first talked to Mr. Rodgers — strike that — first talked to Mr. Tyler about the posting of the decision or the notice until the time you went back into the control room after this whole incident was over, how much time did that take? A. From three to five minutes.

Q. Does that include the time you went out to the car? A. Yes.

Q. Was anything more said about that during that day to you?

A. Not a thing.

Q. Then, did you work the rest of the day?

49 A. I was there, yes.

Q. Did you go back to the plant on the next day, which would have been — A. (Interrupting) Yes.

Q. (Continuing) — which was a regular working day?

A. Which was a regular working day.

Q. Which was September 20, 1967? A. Yes.

Q. And what happened when you went in to work that day? A. I went in and sat my lunch basket down in the control room and shortly thereafter Mr. Tyler came in and said he wanted to see me. He had me come to his office and handed me an envelope and I started to leave there and he said, "Wait a minute, I want you to open it right now." So I opened it up and read the letter and there was a letter in there and he said, "Now, have you got anything in here that is yours"? I said, "No. Wait a minute," I said, "Yes, I have my lunch bucket." He said, "Get it." I went on to the control room; Mr. Henry Tyler followed me.

Q. What happened then? A. I came on back out through the plant and Mr. Tyler followed me right to the main gate.

Q. Then what? A. I left.

* * * * *

50 Q. (By Mr. Wacknov) I show you what has been marked as General Counsel's Exhibit No. 4, which is a letter dated September 19, 1967, to you signed by Mr. Angle, a two-page letter. Is this the letter you were handed in the envelope by Mr. Tyler on the 20th of September? A. Yes, it is.

MR. WACKNOV: At this time I offer General Counsel's Exhibit No. 4 into evidence.

MR. ROBERT MARTIN: No objection.

TRIAL EXAMINER: It will be received.

* * * * *

Q. (By Mr. Wacknov) Mr. Rodgers, after that date of September 20, have you been back to the plant since then? A. No, I have not.

Q. Directing your attention to on or about October 2, 1967, did you receive a letter from the company discharging you? A. Yes.

* * * * *

51 Q. (By Mr. Wacknov) I hand you what has been marked as General Counsel's Exhibit No. 5, which is a four-page letter dated October 2, 1967, signed by Mr. George A. Angle. Is that a copy of the letter you received which terminated you? Is that the letter you received?

A. Yes, it is.

MR. WACKNOV: At this time I offer General Counsel's Exhibit No. 5 into evidence.

TRIAL EXAMINER: Are there any objections?

MR. ROBERT MARTIN: No objections.

TRIAL EXAMINER: It will be admitted into evidence.

* * * * *

Q. (By Mr. Wacknov) Now, Mr. Rodgers, on Saturday, September 16, 1967, did you go out to the plant during a time when you were not scheduled to work? A. Yes, I did.

Q. And approximately what time did you go out to the plant?

A. Well, it was before noon but I am not sure exactly what time it was.

52 Q. And what was your reason for going out to the plant, reason or reasons you may have had?

MR. ROBERT MARTIN: Object. He can state what he did.

THE WITNESS: I went out to get my check and also to talk to the men about the Goldberg ruling.

TRIAL EXAMINER: I will overrule the objection.

Q. (By Mr. Wacknov) Did you have a copy of the Goldberg ruling with you? A. Yes, I did.

Q. When would you have normally received your check?

A. Friday, on a Friday.

Q. Were you at the plant on Friday? A. No, I was not.

Q. Where were you on Friday? A. I was in Wichita.

Q. For what purpose? A. A court hearing on the contempt charge.

Q. Against whom? A. Mr. Angle.

Q. Did you testify in that hearing against Mr. Angle? A. Yes.

Q. Were you under subpoena by the National Labor Relations Board? A. Yes.

53 Q. Did you testify on behalf of the National Labor Relations Board? A. Yes, I did.

Q. Do you recall how many days that hearing lasted? A. It seems like three.

Q. It ended on the 15th, is that correct? A. Yes.

Q. Now, when you went in to the plant on the 16th, which was a Saturday, what happened? A. Well, I came in and saw my check pinned to the bulletin board.

Q. Do you know who pinned it to the bulletin board? A. No, I have no idea.

Q. Was it in an envelope? A. Yes.

Q. With your name on it? A. Yes.

Q. All right. A. And then I talked with the men that were working there on duty.

Q. Do you recall what their names were, of the men who were there working on duty? A. I believe it was Jim Hamm and Fribenberger.

Q. Mr. Hamm, what is his title with the company? A. Senior operator.

54 Q. Mr. Fribenberger, what is his title? A. Junior operator.

Q. Who else did you say? A. I believe Mr. McCales was there.

Q. What is his title? A. Junior operator.

TRIAL EXAMINER: Spell that name.

MR. WACKNOV: I believe M-c-C-a-l-e-s, although I am not sure.

TRIAL EXAMINER: That will be sufficient.

Q. (By Mr. Wacknov) Do you have any — did you have any conversation with these people? A. Yes.

Q. How did the conversation begin? A. Well, we were talking about, I don't remember for sure, about cars or something; I don't know what it was. Then we came around to the Goldberg ruling.

Q. What did you — who started talking about it? A. I did.

Q. Did you have a copy of the ruling with you? A. Did I have a copy?

Q. Yes. A. Yes, I did.

Q. So, to the best of your recollection, what did you say with regard to this matter?

55 A. Well, I let one of the men read the appendix and I said, well, they could read the remaining part of it when they, the rest of it was posted. Well, I think I let three of them read it.

Q. Who were they? A. Well, Mr. Jack Durbin came in.

Q. Who is he? A. A maintenance man. He said, "What you got there"? I said, "This is the Goldberg ruling," and I said, "here is the appendix if you would like to read that." And he said, "Yes, I would like to read it."

Q. Anything else? A. Well, he said, "Do you think Mr. Angle is going to sign that"? I said, "Well, I don't know; I don't know whether he is going to sign it right now or not but," I said, "I am quite sure this will be posted. I know it will be posted."

Q. And did Mr. Hamm read this? A. Yes, he did, the appendix. I told him the same thing; the other would be posted.

Q. Was there any talk about the contempt of court hearing?

A. Yes, there was. I told them we had taken a real drubbing there and in light of the evidence I thought Judge Brown had been very fair in his judgment on the thing.

Q. And approximately how long were you there at the plant on this Saturday?

56 A. Well, I am not sure, perhaps 20, 30, 40 minutes. I don't know.

Q. And you left after that? A. Yes, I sure did.

Q. Did you see anyone else out at the plant while you were there? A. Yes.

Q. Who? A. Mr. Harry Harms.

Q. Who is he? A. The plant engineer.

Q. Did you have any conversation with him? A. No, I did not.

Q. Mr. Rodgers, has anyone ever told you that the plant was not open to those who were not on duty? A. I have never been told that.

Q. Have you heard anyone else told this by any supervisors or anyone else at the plant? A. No.

Q. As a matter of fact, have you seen individuals out there at the plant during their off-duty hours? A. A good many times, yes.

Q. What might these people be doing in their off-duty hours? A. There has been various reasons. Some, they just might have stopped by, stopped by there to visit a few minutes; maybe they are

57- passing by and come in and visit a few minutes and some have come by to get their checks and no particular business, just to visit a few minutes.

Q. Have you seen any of them there with any members of their families? A. Yes, I have.

Q. Has anyone told you since you were reinstated or since you went back to the plant on or about July 19, 1967, has anyone told you that your work was unsatisfactory? A. No.

MR. WACKNOV: Mark that as No. 6.

* * * * *

Q. (By Mr. Wacknov) I show you what has been marked as General Counsel's Exhibit No. 6, which is a letter of September 27, signed by Mr. Angle; did you receive that letter on or about September 27?

TRIAL EXAMINER: That is '67?

MR. WACKNOV: Yes, sir.

A. Yes, sir.

Q. (By Mr. Wacknov) What was enclosed with this letter?
A. There was a check.

Q. A pay check? A. Yes.

MR. WACKNOV: At this time I offer General Counsel's Exhibit
58 No. 6 into evidence.

MR. ROBERT MARTIN: No objection.

TRIAL EXAMINER: It will be admitted into evidence.

* * * * *

Q. (By Mr. Wacknov) Directing your attention to General Counsel's Exhibit No. 5, which is a letter of October 2, directing your attention to Page 3, the second full paragraph of that page, there is a mention of an N.L.R.B. hearing. Do you know the date on which you testified as a witness in that particular N.L.R.B. hearing that the letter refers to? A. August 9, '67, I believe.

* * * * *

Q. (By Mr. Wacknov) Did you testify at that hearing? A. No.

* * * * *

60 Q. (By Mr. Wacknov) Mr. Rodgers, again directing your attention to the hearing on August 9, 1967, when you appeared at the N.L.R.B. hearing, did you appear there under subpoena? A. Yes, I did.

* * * * *

62 CROSS EXAMINATION

Q. (By Mr. Robert Martin) You came back to work on July 19, is that correct? A. I believe that is correct, yes.

Q. And at the time you came to work on that date you came as a result of a letter received from Mr. Angle, is that true? A. Well, yes, I received the letter from Mr. Angle the 17th.

Q. July 17? A. Yes.

Q. And it was a letter of July 17, General Counsel's Exhibit 2, which caused you go to back out to the plant and present yourself?
A. Actually, I called and Mr. Mestal told me the time and date to return to work.

Q. Who is Mr. Mestal? A. He is an attorney for the N.L.R.B.

* * * * *

66 Q. (By Mr. Robert Martin) Did you make the notes that were in those notebooks on company time? A. Many of them I did, yes.

Q. And did you testify at that hearing on September 13, 1967, that you intended to continue to spend your time out there making notes whenever you deemed it necessary? A. Yes, I did, and as long as I felt that it was beneficial to me in light of the discriminatory action against me.

Q. That is not quite what you said, is it, Mr. Rodgers? You said you were going to continue to make notes as long as you deemed it necessary. A. That is very true.

Q. You told him that on September 13, just six days before you were suspended? A. Yes, I believe I did.

Q. You admitted right in open court that you had taken those notes on company time? A. Yes, I did.

* * * * *

70 TRIAL EXAMINER: That is one form; if he was fired because he gave false testimony, that would be one. I don't believe there is a law that says a person can't be fired for perjury. If that's the only issue we have in here that is a point of law and we don't need to take any more testimony and we can take the case back up and decide it.

MR. WACKNOV: I would disagree with your statement that it is a violation of the law to give false testimony.

TRIAL EXAMINER: I didn't say it was a violation of law.

MR. WACKNOV: That a person could be discharged under the Act legal for giving false testimony under the Act?

TRIAL EXAMINER: You say you don't agree with that?

MR. WACKNOV: No.

TRIAL EXAMINER: We are in disagreement.

71 MR. WACKNOV: The Act itself, Section 8(a)(4) states it shall be an unfair labor practice —

TRIAL EXAMINER (interrupting): That's for the giving of testimony, not for falsifying it. For heaven's sake, you are not telling me the Act is to protect a perjurer? The Act is to protect a man in giving testimony that is not perjured testimony with respect to his protected activities under the Act. It does not protect a man to use the Act as a shield to lie under oath. We don't need to argue about this.

MR. WACKNOV: Could we state, I state what my thoughts are?

TRIAL EXAMINER: Do you say the Act would protect a man to testify falsely?

MR. WACKNOV: Yes, if this man has testified falsely there is another forum.

* * * * *

87 REDIRECT EXAMINATION

Q. (By Mr. Wacknov) Mr. Rodgers, I hand you a copy of a subpoena to Arel Rodgers directing your appearance at a hearing on the 9th day of August 1967 —

* * * * *

Q. (By Mr. Wacknov) Did you receive a copy of that subpoena requiring your appearance at the hearing on October 9? A. Yes, I did.

Q. I note there is a slip, a return receipt, registered No. 778417, dated August 7, 1967, with a signature. Is that your signature on the return receipt? A. Yes, it is.

* * * * *

89 RECROSS EXAMINATION

* * * * *

Q. (By Mr. Robert Martin) This is what they were referring to, as a matter of fact; on August 9th you did appear down in the Federal Court in another case and you did sit at the counsel table behind government counsel, and you didn't testify as a witness, did you?
A. No.

TRIAL EXAMINER: To answer his question, you did these things?

THE WITNESS: I did do these things, yes.

* * * * *

90 Q. You did appear down there? A. Yes.

Q. You did sit at the counsel table? A. Yes.

Q. And you didn't testify as a witness? A. No, I didn't testify.

Q. As a matter of fact, you passed the lawyer technical information about that plant, and information about other employees that were called as witnesses, did you not? A. I don't know that it was technical information, but I did give him information I knew about.

Q. Some of the information — there were two notebooks — you took down in these notebooks while you were out there on Mr. Angle's time, isn't that right? A. Yes.

Q. Now, as a matter of fact, whether they should have or not, the other employees did resent it, didn't they? A. I have no knowledge of it.

MR. WACKNOV: How would he have any idea?

TRIAL EXAMINER: He can answer the question.

91 A. I have no knowledge that is true.

MR. WACKNOV: I still object to the question, regardless of his answer, as being immaterial and irrelevant, and calling for an opinion.

Q. (By Mr. Robert Martin) Do you recall when your deposition was taken about or on August 17, 1967? A. Yes.

Q. Let me ask you, let me read to you starting on page 74, referring to your notebook.

"QUESTION: I guess that is what you say, something, the men aren't even helpful today, do you know what this is?

"ANSWER: Men."

MR. WACKNOV: Objection — I will withdraw the objection.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Robert Martin) "QUESTION: I don't know.

"ANSWER: Men, I would say it is men. We were trying to understand his handwriting.

"QUESTION: You say the men aren't even helpful today?

"ANSWER: They were not very friendly or helpful.

"QUESTION: What men are you talking about?

"ANSWER: Those that are in operation with whom I deal.

"QUESTION: So you say that, which particular men do you say were not very friendly, or not very helpful today?

"ANSWER: The men with whom I have to —

"QUESTION (interrupting): Name them.

92 "ANSWER: I do not remember who was on shift this particular — that day particularly, but I sure could look it up for you.

"QUESTION: Did they say anything to you?

"ANSWER: I am sure we talked, sure.

"QUESTION: You say they were not very helpful?

"ANSWER: And not very friendly.

"QUESTION: What do you mean by that?

"ANSWER: Well, they didn't volunteer anything.

"QUESTION: Was that the day following the day that you came down here to Wichita and set with Mr. Wachnov and passed Mr. Wacknov notes, and whispered information to him about the plant while he cross-examined some of those very men that was out there in the plant; isn't it?

"ANSWER: Yes.

"QUESTION: Do you suppose that might be why they were a little unfriendly?

"ANSWER: I think there probably was some other things involved, too.

"QUESTION: I ask if you think it might be?

"ANSWER: I doubt it."

MR. WACKNOV: If you are going to read it, read it correctly.

Q. (By Mr. Robert Martin) "QUESTION: What do you think could be the other cause of their unfriendliness?

93 "ANSWER: I suppose there could be some outside thing from Mr. Angle; he might have scared them.

"QUESTION: You don't think he should do it?

"ANSWER: I am simply saying why they were not friendly.

"QUESTION: You are saying why you suspect they were not friendly.

"ANSWER: That is exactly right.

"QUESTION: It is only a conclusion; you have nothing to go on?

"ANSWER: That would be my opinion."

That is the very day following the day you were down in Wichita and aided in the cross-examination of those fellow employees that you, in your own notebook, said they were not very friendly and not helpful? A. It was the day after.

Q. It was the next day when you people got back up and went to work? A. Yes.

Q. You did pass them notes from which to cross-examine your own fellow employees out there, did you not? A. Yes.

Q. And whisper things in his ear about what was going on out there at the plant? A. Yes.

Q. As a matter of fact, you did that all day with your own fellow

94 employees on the witness stand, is that right, or most of the day? A. Most of these men I didn't know even, as far as that was concerned. However, they do work at Kansas Refined Helium.

Q. They were people who are junior operators and senior operators, were they not? A. No.

Q. They weren't? A. No.

Q. Who was it? Merle Smith was one. A. I don't remember or recall who was —

MR. WACKNOV (interrupting): I have a list of who they were, and I would like to read this into the record.

MR. ROBERT MARTIN: You are not on the witness stand.

Q. (By Mr. Robert Martin) Do you know who it was that was being examined that day? A. The ones I do remember were in maintenance, and I do not work with them.

Q. They work in the same plant? A. One of them was Mr. Henry Tyler.

Q. Anybody else, any of the junior operators or senior operators? A. Not that I remember of.

TRIAL EXAMINER: Did you pass notes with respect to all of these witnesses or just with a few?

95 THE WITNESS: No.

* * * * *

96 Q. (By Mr. Robert Martin) That notation I read to you about the men being unfriendly, it did appear in your notebook under the date of August 10th? A. Yes.

Q. Which is the day after you returned from this episode in Wichita we described? A. Yes.

Q. No question about the time? A. No, I assume these dates are correct.

* * * * *

97 REDIRECT EXAMINATION

Q. (By Mr. Wacknov) Mr. Rodgers, did you pass notes to me or whisper to me at the hearing pursuant to my request at this hearing on August 9, 1967, before Trial Examiner Goldberg? A. Yes.

* * * * *

Q. (By Mr. Wacknov) Were the notes you wrote me with regard to questions I asked you or whispered to you with regard to the operations of the plant? A. One in particular was what kind of fence was around there, and there was some question about a fence around it.

Q. Did it all concern the testimony at the hearing, these notes you passed me, was it information concerning the testimony at the National Labor Relations Board hearing? A. Yes.

* * * * *

100 Whereupon,

AREL RODGERS

was recalled as a witness by and on behalf of the Respondent and, having been previously sworn, was examined and testified further as follows:

* * * * *

DIRECT EXAMINATION

* * * * *

101 Q. (By Mr. Robert Martin) Did you, Mr. Rodgers, after your return to the plant on July 19, call Mr. Wacknov about, almost every day? A. Quite frequently, yes.

Q. Almost every day to be exact? A. Quite frequently, I did.

* * * * *

Q. (By Mr. Robert Martin) Did you make your calls while you were at work?

102 A. No, I did not make any calls on duty.

Q. You did after work? A. After work.

* * * * *

Q. (By Mr. Robert Martin) In those conversations, one of the things you were telling Mr. Wacknov for sometime after you came to work out there was that you were confined in a cubicle and segregated from the other employees, isn't that right? A. Yes.

* * * * *

103 Q. (By Mr. Robert Martin) Do you know from what you heard in court and with your conversations with counsel that this contention on your part that this has been going on is one of the things that led to the prosecution of Mr. Angle for contempt? A. I would say, probably, yes.

Q. The truth of the matter is, Mr. Rodgers —

MR. WACKNOV (interrupting): I don't —

Q. (By Mr. Robert Martin — continuing) — you were not confined in a cubicle, and as soon as you asked you were given the run of the plant, you say that is not true? A. I would say that is not true.

Q. Do you remember when Judge Brown asked you some questions in the criminal contempt case? A. I remember him asking some questions in the criminal contempt case.

Q. Do you recall that he asked you some questions about this
104 particular thing, that is about whether or not you were confined in this plant in a cubicle or whether you had the run of the plant?
A. Yes, I do have some recollection of that question being asked. I am not sure that Judge Brown asked it, but I do recall the question being raised.

Q. Let me ask you if you remember this during the trial.

"QUESTION: That was on Wednesday and on Friday you asked Mr. Tyler if you had the run of the plant and he told you you did, and you could go any place you wanted to, didn't you?

"ANSWER: I asked him.

"QUESTION: That was not what I put to you, Mr. Rodgers. On Friday after you came back on Wednesday you asked Mr. Tyler if you could go any place in the plant and he said, "Didn't you"? You weren't restricted at all, were you?

"ANSWER: I was not restricted at all.

"QUESTION: As a matter of fact, at one time —

"THE COURT (interrupting): Wait just a minute, Mr. Rodgers. The question he asked you was did you ask Mr. Tyler — what was he?

"ANSWER: Operations, Mr. Martin, the engineer in charge of the plant.

"THE COURT: Is he the plant engineer?

"ANSWER: No, his title is plant manager.

105 "THE COURT: Well, was it when you talked to him?

"ANSWER: He was then, I believe, I am not sure what his title was, operations manager, I think.

"THE COURT: All right, but he was in charge of the plant out there?

"ANSWER: Yes.

"THE COURT: You say you asked him if you had the run of the plant, is that what you asked him?

"ANSWER: I asked him if it would be all right and go out in the maintenance building and any place I wanted in the plant and —

"THE COURT (interrupting): What did he say?

"ANSWER: Oh, yes, it would be fine.

"THE COURT: That is the answer.

Go ahead."

Do you remember that examination? A. Yes, I sure do.

Q. And yet, notwithstanding that you were contending to the government lawyers during this time that you were confined to a cubicle and restricted in the plant, isn't that right? A. I was restricted in the cubicle for three days.

Q. You didn't say anything about three days. You were contending you were confined in the cubicle throughout this period of time, didn't you? A. No.

106 Q. Let me ask you if these questions were asked and answered.

"QUESTION: And yet, you are claiming to Mr. Wacknov that you were confined in the cubicle; we have heard this now, is that what you contend, that you were restricted in the cubicle, that you couldn't go where you wanted to?

"ANSWER: That is right.

"QUESTION: Notwithstanding the conversation you just recited with Mr. Tyler that is your contention?

"ANSWER: That is right.

"QUESTION: Locked in a cubicle, right?

"ANSWER: Right."

Did you make those answers right after Judge Brown asked you the questions I read earlier? A. I was in the cubicle three days.

Q. You weren't even in the cubicle an hour and a half; you were released to go get coffee or released to go to the coffee control room an hour and a half after you got to the plant the first day, weren't you? A. No.

Q. Remember these?

"QUESTION: So, an hour and a half, so, that in an hour and a half you were released to go get a cup of coffee?

"ANSWER: Yes.

"QUESTION: From that point on you went to get coffee whenever
107 you wanted to?

"ANSWER: Yes."

Were you asked those questions in that criminal contempt case, and did you give those answers? A. Yes, I did.

* * * * *

109 Q. (By Mr. Robert Martin) You were also telling the government lawyers in August of 1967 that the retraining program that you had out there was something you had done before and wasn't worthwhile, and you were not being, as they put it, you were rehired and not retrained. Did you tell them that? A. I would say that was the case, yes.

Q. But you told other employees out there at the plant that that retraining program was useful to you and helpful to you, didn't you? A. There were portions that this was very true.

Q. Did you tell some of your other — the other senior operators that this retraining program you were undergoing was a good one and you were glad to have the opportunity to do it? Answer yes or no.

MR. WACKNOV: The witness does not have to answer yes or no.

110 He can answer the question as best as he can. A. At that time, when I told him that was a good program, I had colored the flow sheets

and studied the manuals, but extending that thing over an indefinite period as it was was not good.

Q. (By Mr. Robert Martin) Did you tell them the program was a good one and you were glad you had an opportunity to take it? A. At that time, with the exception of coloring flow sheets, which I had done several times.

Q. When you were in the retraining program, that is, when you were examining flow sheets and reading data about this plant, you did learn from that and from actual in-the-plant observations that Mr. Tyler went with you to make sure that there was considerable new equipment installed in that plant that had been installed and put in operations since you had been off 10 months earlier?

MR. WACKNOV: I object to that as irrelevant and immaterial as equipment in the plant.

TRIAL EXAMINER: I think he can answer the question.

A. There were some new pieces of equipment added.

Q. (By Mr. Robert Martin) There were also different operating procedures with respect to the mixture of gas coming through the plant and the balance of machinery, and through put, isn't that true?

111 A. This was it — as far as the content of the gas — it had changed.

Q. It had changed radically, hadn't it? A. It had changed radically.

* * * * *

Q. (By Mr. Robert Martin) During this period of time when the criminal and several contempt charges were pending and being prepared for trial, Mr. Tyler would come to you from time to time and ask you how your retraining was going, what you had learned, and what you hadn't learned, and asked you for advice as to your retraining, isn't that right?

112 A. Yes.

Q. And you would be noncommittal with him, wouldn't you? You wouldn't tell him? A. On one occasion I was noncommittal, as I wrote in the booklet. I had answered that question several times, saying that there were probably other methods that could be more effective and if I really wanted to get a man back on shift I would put him on the job and get him productive as quick as possible.

Q. Let me ask you if you can remember these questions and answers?

"QUESTION: Mr. Tyler has from time to time tried to find out from you what you don't know or what you do know so he could find out what to train you on and you have been noncommittal with him. You have avoided answering him, haven't you?

"ANSWER: On occasions Mr. Tyler has asked me what I thought he could do to expedite this matter and then he suggested that the quickest way would be to put me with a junior operator to turn the valves.

"QUESTION: You just won't answer my question, will you? So, let me ask you if this is a correct quotation from your own notebook?

"ANSWER: Yes.

"QUESTION: Henry —

113 "THE COURT (interrupting): What is the date?

"MR. ROBERT MARTIN: There isn't a date on it.

"THE WITNESS: There is a date there.

"MR. ROBERT MARTIN: I will fix the date.

"QUESTION: Quoting from the notebook, quote, 'Henry keeps asking me how much I remember so he will know how extensive training he should give. I have been very noncommittal.'

"Is that there in your own handwriting?

"ANSWER: Yes, sir.

"QUESTION: That is what you have been doing there, isn't it, Mr. Rodgers?

"ANSWER: I have been there to be trained by the method he told three senior operators that I listed in my booklet."

Q. Were you asked those questions, and did you make those answers? A. Yes.

Q. Did you write down in your notebook what I just read to you —

"Henry keeps asking me how much I remember so he will know how much extensive training he should give. I have been very noncommittal."

Did you write that? A. Yes, I did.

* * * * *

114 Q. You were taken in the control room and Mr. Tyler, in front of you and everybody else, said to the senior operator who was on duty or the senior operator that would train you said, "I want to train this man in a normal manner for a senior operator's position." A. He told me he wanted me to be trained in the usual manner.

Q. He not only told you, he took you in the control room with these other senior operators and told them in your presence. A. Yes, he took me in to their presence and said I was to observe and to ask questions, and they were to train in the usual manner and that was to make a move and explain why they made it, and I was supposed to stay around there and to gain this information.

Q. Now, you were right there when he asked these senior operators to give you that sort of training, isn't that right? A. Yes.

Q. And prior to the contempt hearing, that is, to the time Mr. Angle was tried for civil and criminal contempt in connection with this retraining program, you had told the government lawyers, and you had

115 testified in a deposition that you were claiming that those senior operators didn't do what Mr. Tyler said, isn't that right? A. Yes.

Q. But then, when it came down to the trial of the contempt action, you admitted they did perform what they said, that is, they did train you, isn't that true? A. No, I don't think so.

Q. You do admit when your deposition was taken back in August you were asked this question and made this answer:

"QUESTION: All right, but as far as you know you contend that the other supervisors or the other board operators are not carrying out Mr. Tyler's instructions?

"ANSWER: I sure do."

Q. You were asked that question while these contempt proceedings were pending and that was your answer? A. Yes.

Q. When you appeared down here in federal court at the contempt trial in September — I will ask you if these questions were asked, and you made these answers?

Page 178:

"QUESTION: What? Do you say Smith did or didn't carry out what they told him?

"ANSWER: For two days I said he did.

"QUESTION: How about Harms and Wakulich?

116 "ANSWER: Harms is not a senior operator.

"QUESTION: Harms is the next in command under Tyler, and he was there too when Tyler told you to train in a normal manner.

"ANSWER: I think he was not.

"QUESTION: You think he was not. How about Mr. Wakulich, do you say he doesn't do what Mr. Tyler tells him to do?

"ANSWER: Mr. Tyler said I would be trained by them making the moves and explaining it to me and my asking questions, and the senior operators, with the exception of Merle Smith doing exactly what he was told on those two days, he did that."

Q. What you are saying, the senior operators, with the exception of Merle Smith, did exactly what they were told, except Merle Smith didn't, with the exception of two days? A. There was two days Mr. Smith did what Mr. Tyler said in that respect; the rest of them for two reasons, as I pointed out in the deposition, did not.

Q. You said in the trial they did exactly what they were told. A. Well, frankly, they did not.

Q. You say not? A. If that is what it says, I must have made a mistake.

Q. You claim they didn't? A. They did not.

Q. You were there in the control room?

117 A. Yes.

Q. They would make the moves? A. Yes.

Q. And you asked — did they explain to you why they were making the moves? A. That is the point; they did not.

Q. The first two days you were on duty, you were on duty with Merle Smith, weren't you? A. I don't remember off hand as to who it was I was on duty with.

Q. Mr. Smith explained to you for two days what he was doing when he ran that control board? A. I believe what Mr. Tyler said, they were to explain the moves, not two days.

Q. Now, Mr. Rodgers, the first two days you were back on duty in the control room under this training that Mr. Tyler had outlined for you in your presence you were working under Merle Smith, and you know this is correct, don't you? A. No, I do not.

Q. In any event, for two days Merle Smith did as he made a move explain to you why he done it? A. He also let me run the panel one day.

Q. From that point on, you were supposed to ask questions if there was something you didn't understand? A. I was also supposed to ask questions.

118 Q. Mr. Tyler told you that, didn't he? A. Yes.

Q. You didn't ask any questions? A. Yes, I did.

Q. Not very many, did you? A. I asked questions as it says right in there (indicating), only obscure questions. I had been in the plant and helped start it up.

Q. Well, you just stood back and after Mr. Smith worked with you for a couple of days and put you on the board, you stood back and

did nothing and when Mr. Tyler came around and asked you what he could do to be expedital with your training, you were noncommittal? A. No.

Q. During this same period of time, you were writing notes in your notebook about the fact Mr. Angle would call Mr. Tyler or the fact, I recall one, I think there was some inquiry about the location of a line that led into the plant and you took notes on that, what you could hear of that telephone conversation. A. I did not take any conversations down.

Q. I don't mean you were listening on the telephone. You would make notes Mr. Tyler would answer the call from Mr. Angle.
A. That would be in my notes that Mr. Leon Meyers said there is a
119 phone call from Mr. Angle to Mr. Tyler. I did not listen.

Q. You do not know what the call was about? A. The only way I would have had any way of knowing would be if that individual told me.

Q. You were out there taking notes of the fact that there had been a phone call even though you had no way of finding out what it was about. You took time out from your employment to write that down in your notebook and report it to Mr. Wacknov? A. I did write it in my notebook.

Q. Do you remember writing down the one about the fact that while you were in Mr. Harms' office undergoing training they put some fish in the pond across the road and they invited some other employees to watch them put the fish in, but they didn't invite you? A. Yes, I do.

Q. You were out there on company time and you wrote that down in your notebook? A. Yes.

Q. Do you remember tearing pages out of that notebook?
A. Yes.

Q. Do you remember in one of these areas when I asked you about Mr. Tyler's inquiry as to how you were coming along with your training

program, that was on page 6, and the answer that you gave him on page 7 was missing?

120 A. There was no misnomer there or anything of the kind. I can easily explain that by looking at the notebook. I done the numbering myself. You are saying that page is torn out, which is inaccurate.

Q. There isn't any answer, is there? A. The answer was, I didn't get to go watch the fish put in the pond.

Q. Do you remember these questions and answers on that incident? Page 166 of the testimony in the contempt trial?

"QUESTION: Let me hand you this notebook that has been marked deposition Exhibit B. Look at page 6; do you see the note there about Mr. Tyler asking you if there was any way, in essence, if there would be any way to speed up the program of your retraining?

"ANSWER: You quote from the notebook, 'Henry wanted to know if I knew any more speedy way, if they could expedite this matter.'

"QUESTION: Your training?

"ANSWER: That was what was in view.

* * * * *

121 Q. (By Mr. Robert Martin) "QUESTION: Now, you read me what

122 you had in your book, what is —

"ANSWER (interrupting): 'Henry wanted to know if I knew any speedy way they could expedite this matter.'

"QUESTION: Your training?

"ANSWER: That is what was in view.

"QUESTION: All right, now, where is your answer?

My answer, and you indicated the notebook; you pointed to your head.

"QUESTION: Is in your head?

"ANSWER: Well, it might be here. Let us look further.

"QUESTION: You are going the wrong way, Mr. Rodgers; look at the next page.

"ANSWER: It says page 8.

"QUESTION: What is the page you just read from?

"ANSWER: Page 6.

"QUESTION: Where is page 7?

"ANSWER: I don't think there is a page 7."

Q. Were you asked those questions, and did you make those answers? A. Yes.

Q. Now, do you remember this question on the next page?

"QUESTION: Isn't it true, Mr. Rodgers, that you don't even know what you told Mr. Tyler, and you can't remember what you told Mr. Tyler when he asked you if there is any way to accelerate your training?

123 "ANSWER: I think I do.

"QUESTION: You think you do?

"ANSWER: Yes.

"QUESTION: Let me read page 34 of your deposition taken on August 17, 1967, quoting from your deposition. 'Question: I note a note on page 6 of this notebook, Henry wanted to know if I knew any more speedy way they could expedite this matter.' That is what you wrote?

"ANSWER: Yes.

"QUESTION: What did you tell Mr. Tyler? You told him there wasn't, didn't you?

"ANSWER: No.

"QUESTION: No?

"ANSWER: No.

"QUESTION: As a matter of fact, you told him — where do you recite Mr. Tyler's answer?

"ANSWER: If I wrote it down, I can't find it.

"QUESTION: Let me see if I can help you. You wrote it down and tore it out, didn't you?

"ANSWER: No.

"QUESTION: Look at these pages. One is numbered 6.

"ANSWER: Yes.

"QUESTION: Which is the notation I read you, and the next page is 7.

"ANSWER: That is right.

124 "QUESTION: Where is page 7?

"ANSWER: I don't know. Could be such a thing, it is unnumbered.

"QUESTION: What do you say you told Mr. Tyler?

"ANSWER: Well, I am not quite sure that —

"QUESTION (interrupting): I don't want quite sure. What do you say under oath now you told Mr. Tyler when he asked this question?

"ANSWER: I think I told him that this was, I really don't remember what I told him. I just don't remember.

Q. Were you asked those questions, and did you make those answers? A. Yes.

* * * * *

126 Conference Room
Federal Building
Great Bend, Kansas
Wednesday, January 24, 1968.

* * * * *

129 Whereupon,

AREL RODGERS

was recalled as a witness by and on behalf of the Respondent, resumed the stand, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION (Continued)

131 Q. (By Mr. Robert Martin) * * * You answer my question. When you would leave Mr. Harms' office and go down the hall and go into the control room and go to the coffee put or whatever else you did, nobody interfered with whatever you did? A. It was understood I was to go to the coffee pot. I didn't go in any other place with the exception of looking to the clock.

Q. If we have to stay here past noon to get an answer to that question we are going to get it. As you would leave Mr. Harms' office, whenever you pleased, at your will, and go down there and get a cup of coffee, nobody interfered with where you wanted to go; nobody obstructed you in the slightest? A. That is not so.

Q. Who do you say stopped you from going some place?
A. Mr. Henry Tyler.

Q. Tell me how that occurred.

132 A. Mr. Tyler told me he did not want me to go out into the plant until he had had an opportunity to post on the bulletin board notice that I was back to work because he did not want it to be embarrassing.

* * * * *

133 Q. (By Mr. Robert Martin) At that time when Mr. Tyler brought you in there and asked you to commence this study, that is when you asked Mr. Tyler if you could go get a cup of coffee?
A. Yes.

Q. Mr. Tyler said to you in substance he wanted an opportunity to inform the employees that you were back in the plant, so, to save embarrassment or notify them you were back, and he would be back to see you and he left the room? A. No.

Q. What did you say? A. Mr. Tyler told me at this time, no, I could not go get a cup of coffee; he wanted to post on the bulletin board I was back to work because he did not want it to be embarrassing.

Q. And within an hour and a half he was back? A. Yes.

Q. And when he got back he asked you if you would like to go get a cup of coffee? A. He said I could go get a cup of coffee.

Q. You did go get one? A. Yes.

Q. Not only did you go get one cup of coffee that day, you went to get a cup of coffee whenever you pleased? A. Yes.

* * * * *

137 CROSS EXAMINATION

Q. (By Mr. Wacknov) Mr. Rodgers, on July 19, 1967, when you went back to work, you went into the plant and you talked to Mr. Tyler, is that correct? A. Yes.

Q. What, to the best of your recollection, did Mr. Tyler say and what did you say to him on this occasion? A. Well, I got there a few minutes before 8 and Mr. Tyler came in and gave me some training manual and some flow charts and he said, "I believe that you should — it would probably be best if you went into Harry Harms' office and I would like you to study these as a refresher and color these flow charts." And he said Harry Harms was on vacation so we could use his office, and I believe he also told me he had some questions that he

138 thought would be helpful if I would answer these. When he was finished, why, I said, would it be permissible for me to go get a cup of coffee, and he said, "No, I want you to stay here. I want to post a notice on the board because the men don't know you are back to work and I want to save any embarrassment, so I will post a notice on the board first."

Q. Did he say who he wanted to save any embarrassment? A. No.

Q. Was there ever a notice posted on the board? A. I looked and checked on every occasion I went to the coffee pot, which, I went right by that bulletin board, to check to see if that notice was on the board and it never was.

Q. And during the time you were restricted to that particular area because you had been told to stay in that room and the only thing you could do was get a cup of coffee? A. That was my understanding and I believe that is the way he had intended.

Q. Did Mr. Tyler tell you anything different? A. He did not.

Q. The third day when you were back, had you seen a notice posted on the board saying you were back to work? A. I say I did

not. About an hour and a half later, he did come back by and say I could go get a cup of coffee.

Q. Now, the third day you were back, which would be Friday, had the notice been posted on the bulletin board?

139 A. No, there never has been.

Q. Did you ask Mr. Tyler that day whether you could do anything else except stay in that Harry Harms' room or in that area? A. There was never anything said and so, finally, I decided that I would ask him; so, I did ask him.

* * * * *

Q. (By Mr. Wacknov) What time was this you asked him? A. 4:05.

Q. How do you know it was 4:05? A. Because I was in the restroom. I was washing up getting ready to go home; my time of departure was 4 o'clock and I remember it was 4:05.

Q. What did you ask Mr. Tyler? A. I asked Mr. Tyler if it would be all right if I went to the maintenance building or any place I wanted to go in the plant.

Q. What did he say? A. He said it would be fine.

Q. You asked him before you had access to the plant; he didn't tell you? A. He definitely did not.

Q. Was there ever a notice posted up until the time you were discharged?

140 A. There never was a notice posted.

* * * * *

147 Q. (By Mr. Wacknov) Mr. Rodgers, did you see Mr. Angle on that first day you went to work? A. Yes, I did.

Q. Where did you see him? A. On the trip to the coffee pot.

Q. Who is Mr. Angle? A. He is the owner of the Kansas Refined Helium plant.

Q. What was Mr. Angle doing when you first saw him?

A. He was standing at the bulletin board and cleaning his fingernails with a pocket knife.

* * * * *

148 Q. (By Mr. Wacknov) You say he was cleaning his nails with a pocket knife? A. Yes.

Q. Did you speak to Mr. Angle? A. Yes.

Q. What did you say? A. I said, "Hello, George."

Q. This was the first time you were back at the plant? A. Yes.

Q. And did you customarily call him George, by his first name?

A. Yes.

Q. What did he say, if anything? A. He didn't speak.

Q. Did he look at you? A. Yes.

Q. He didn't speak? A. No.

149 Q. When you went out to get a cup of coffee that day, were you passing by the office where Mr. Tyler and Mr. Angle were sitting there in the office? A. Well, as I continued on into the control room to the coffee pot, I — Mr. Angle left and I went back by the bulletin board and looked on there to see if that notice was on there.

Q. What notice? A. That saying that I was back to work so it wouldn't be embarrassing.

Q. All right. A. Then, I continued on into the office area and I went around the corner and looked at the clock in the instrument repair room to see what time it was and turned and started back to the area where I was assigned.

Q. How long did this take for you to go get a cup of coffee and do all these things? A. Just a very few minutes.

Q. Would it be less than a minute? A. A few minutes.

Q. Were you passing by an office where Mr. Tyler and Mr. Angle were sitting? A. Yes.

Q. Whose office was that? A. Mr. Henry Tyler.

Q. Did you hear Mr. Angle say anything? A. Yes.

150 Q. What did you hear him saying? A. He said, I would like to get that s.o.b. outside or something like that.

Q. Did he say s.o.b. or son-of-a-bitch? A. Well —

Q. He said the latter? A. I think so.

Q. Did you see Mr. Angle do anything as you walked by the room? A. As I turned after looking at the clock, why, they saw me and they just kind of ducked a little bit.

Q. Then, did you go back to the room? A. I went right back to the room.

* * * * *

158 Q. When you went back to work or when they were trying to have you observe the board operator, the senior operator, did Mr. Tyler give you any instructions as to what your duties were supposed to be out there at the plant as far as observation? A. Yes, he did.

Q. What did he tell you if you can remember? A. I was to observe the senior operator and to ask questions.

Q. Were you there when he told the senior operators how they were supposed to train you? A. Yes.

Q. What did he tell them? A. He told them they were to train me in the normal manner and to make their move, to explain why they made it.

Q. This is what Mr. Tyler told them to do to train you? A. Yes.

Q. Now, did they do this at all times, explain their moves and tell you why they made them? A. No.

Q. Is this in your deposition? A. Yes, it is in my deposition.

Q. Have you ever testified any differently or told anyone any differently than this? A. No.

Q. As a matter of fact, when you first went back to work, who

159 was the first senior operator that you were supposed to receive instructions from? A. I believe it was Mr. Merle Smith.

Q. Is Merle Smith in this courtroom today? A. Yes.

Q. Did you have any conversation with Mr. Smith with regard to this training program? A. Well, I remember one time in particular that Merle stopped and told me, he said, "I want you to know that I want to be helpful and that I appreciate the times when you have been helpful to me," and he said, "I want you to know that I want to do what I can and anything I know I will help you with," and he said, "This is going to be an awkward situation because you are the one who helped me and now I am going to have to try to teach you this thing." And I told him, I said, "Well, I certainly do appreciate your attitude in this matter and I will appreciate any help you can give me and I do understand the circumstance and I don't hold it against you at all and I appreciate what you are saying."

Q. You had given Merle Smith instructions on how to operate it? A. In other words, he said he felt I had been helpful to him.

Q. You said you would appreciate any help that Merle Smith could give you?

160 A. Yes.

Q. When you went back to work what was the first thing that you were told to do by Mr. Tyler as far as the job was concerned, as far as being in a retraining program? A. Well, I had to color these flow charts and study the manual.

Q. What was the next thing? A. To answer some questions.

Q. Orally or in writing? A. In writing. He said he felt that would help me to understand.

Q. What was the next thing? A. Well, then, he took me out in the control room and said I was to observe and ask questions.

Q. This was in a period of over several weeks? A. Yes.

Q. From time to time did Mr. Tyler ask you various questions, such as how do you think this thing could be speeded up or things like that? A. Yes, he did.

Q. What were your answers on these various occasions?
A. Well, sometimes he would say, I remember one time in particular he told me that he had thought about putting me out with Don Foose.

Q. Who is Don Foose?

161 A. A junior operator. He said maybe if I would go out with a junior operator that would help speed it up.

Q. Speed what up? A. This retraining.

Q. What other occasions do you recall? A. Well, I remember another time that he asked me my opinion as to what could be done and I told him that I thought if he wanted to — if I was doing it, this is the way I used it, that I would get a man right where he was going to work and get him to doing the job himself.

Q. What you are referring to is putting you back on the board?
A. Yes.

Q. Go ahead with that; what did you explain to him. How did you explain to him you would do it if you were going to be retraining someone. Would you put the man on the board immediately? A. I would put him on the job. I would put him on the job that I wanted him to do and supervise him.

Q. After this time that Mr. Tyler said he thought he would have you go out with a junior operator around the plant, did he ever put you out with a junior operator out in the plant to work with? A. No.

Q. From time to time, then, Mr. Tyler asked you what could be
162 done to speed up the process and from time to time you would give him the answers, is that correct? A. Yes.

Q. Mr. Martin says that there was some comment in your notebook about being noncommittal as to one of these questions. Do you recall that incident? A. Well, I remember writing that down in my notebook and I believe he was asking me or actually made a statement something similar to the one that he had said he would send me out

with a junior operator. He made the suggestion and I just simply said, well, that would probably — that would be one way of doing it.

* * * * *

Q. Now, you didn't say to Mr. Tyler, "Well, I am noncommittal about that; I am not going to tell you, Mr. Tyler"? A. No.

Q. What did you say? A. I told him I thought that would be one way of doing it.

Q. You wrote in your book you were noncommittal?

163 A. Yes.

Q. Why did you put that in your book, Mr. Rodgers? A. Well, actually, I had been asked that question several times and I felt that I had answered it and, actually, in this particular situation it wasn't really an answer that seemed to be the need so I just simply said that would be one way of doing it.

* * * * *

164 Q. (By Mr. Wacknov) Did you take it upon yourself to perform
165 any duties at the plant that weren't assigned to you when you went back in July? A. Yes.

Q. What particular duties did you take it upon yourself to perform that you weren't told to do? A. Well, I did a little bit of rearranging in some of the manuals, just maybe get a new copy made or something like that.

Q. Manuals for what? A. Operational manuals or something like that.

Q. Were there various manuals that people looked at from time to time? A. Yes.

Q. What else did you do? A. Another time I made new cards for the conversions for the control panel.

Q. What else did you do? A. I was asked to become familiar with these several three instruments that had been installed on the panel.

Q. Were those the only new instruments installed on the panel?
A. I believe so.

Q. What did you do to become familiar with that? A. I started taking the readings every two hours.

Q. Did anyone tell you to take the readings of those instruments?

166 A. I don't remember anyone telling me specifically to do that.

Q. What else did you do that you were not told to do? A. Right off hand I don't remember any.

Q. Why did you do all these things; did you consider these to be helpful to the operation of the plant? A. Yes, I did.

Q. Did anyone tell you not to do them? A. No.

Q. Did the senior operator in charge see you doing them?
A. Yes, I think so.

Q. Why did you take it upon yourself to do these various things?
A. Because I had a lot of time that was hanging on me and it was real boring.

Q. Why was it real boring? A. Well, because I was supposed to stand around and observe and ask questions.

Q. Prior to your discharge you had run that control panel alone, without any higher authority at the plant, by yourself, isn't that correct?
A. Yes.

Q. Now, did you volunteer for full-time work after you were out there after July 19?

167 A. Yes.

* * * * *

Q. (By Mr. Wacknov) Did you do everything you were instructed to do? A. Yes.

Q. Did you do some things beneficial to the plant you weren't instructed to do? A. I believe I did.

Q. Did you ask any questions of the senior operators why they were doing a particular thing? A. Yes, I did.

Q. Did you need to ask very many questions? A. I didn't feel I did.

Q. Why not? A. For the most part, I had run that panel and didn't feel that — some of the things that were standard I didn't feel was necessary to ask about.

Q. You received a subpoena from the hearing on August 9, 1967?

168 A. Yes.

Q. And you attended that hearing? A. Yes, I did.

Q. Did anyone ever tell you that, I or anyone else ever tell you that you would not be called as a witness in that proceeding? A. No.

Q. Did you come just to sit beside me and give me information I requested of you? A. No.

* * * * *

181 Whereupon,

MERLE SMITH

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give us your name and spell Smith for us.

THE WITNESS: Merle, M-e-r-l-e, Smith, S-m-i-t-h.

TRIAL EXAMINER: Mr. Marvin Martin.

DIRECT EXAMINATION

Q. (By Mr. Marvin Martin) Can you give us your address, Mr. Smith? A. Box A53, O-l-m-i-t-z, Kansas.

Q. Where do you work? A. Kansas Refined Helium, Otis, Kansas.

Q. What is your job title there? A. Senior operator.

Q. Tell us briefly what a senior operator does. A. A senior operator's duties are to oversee the entire operation of the plant, control the plant and oversee the entire operation of the plant.

Q. Now, by operation, are you referring to a different question than maintenance? A. Repeat that, please?

Q. Is your plant broken down into operations and maintenance?
A. Yes.

182 Q. Would you explain what the operations of the plant are?
A. The operations is to bring the gas into the plant and extract the components, leaving pure helium.

Q. In the course of your duties there, do you direct and assign work to the junior operators? A. I do.

Q. How many junior operators do you have? A. Three.

Q. Now, is this a difference from the period of time a year and a half, say, ago, you used to have only two? A. Right, we have three now and we use to have two.

Q. Did you receive any instructions from Mr. Tyler at the time that Mr. Rodgers came back to work in July of 1967? A. Yes, I did.

Q. What did Mr. Tyler tell you? A. Mr. Tyler came in and told me, he says, "Mr. Rodgers will be coming back to work and he will be working on your shift to commence with and you are to instruct him and help him in any way to reorient him on the operation of this plant."

Q. Now, did you get similar instructions regarding a Mr. Garrett? A. I am not right sure because I don't believe Mr. Garrett came back on my shift, but I think Mr. Garrett's name probably was mentioned at the time he came back, but I don't remember just when Mr. Garrett came back. I don't believe he started in on my shift.

183 Q. Had there been a number of changes there in the operation of the plant since or during the period while Mr. Rodgers had been gone? A. The operation of the plant was entirely different from the time that Mr. Rodgers left until he came back again.

Q. Is that an operational change which takes place at one time or a series of gradual changes? A. A series of gradual changes.

Q. Does that make a difference in the manner in which the senior operator has to carry out his function?

MR. WACKNOV: Objection, leading. This is direct examination of the witness.

TRIAL EXAMINER: He can tell us if there has been any changes.

MR. WACKNOV: He hasn't been asked that, Your Honor.

TRIAL EXAMINER: I will permit the question.

Do you understand the question?

THE WITNESS: I kind of got confused.

TRIAL EXAMINER: What changes took place between the discharge of Mr. Rodgers and when he came back in July of '67?

THE WITNESS: There had been several changes taking place. Our components of our gas had changed considerably.

TRIAL EXAMINER: What is that?

THE WITNESS: The components of our products, our gas, had
184 changed completely. We had a crude helium installed; we were buying — I am not sure whether this took place before he came back. It might have taken place just after he came back, but I believe it was before. We had a line laid in from the other Otis helium plant and we had this line tied in and running crude helium in with our gas so we would have more helium product in our gas. We also had installed a compressor in the control house, which we could pump helium back into our feed-gas stream. We had started using a re-cycle valve, which before had never been used in the processing of our own gas because our gas had dropped off to a point where we had to maintain this valve, this kick-back valve, which is our gas we sell, we were reusing this gas in the processing of our own gas. It had changed the operation of the plant considerably.

Q. (By Mr. Marvin Martin) When it changed the operation of the plant, did it require you to function differently and carry on different functions yourself? A. We did from day to day; our operations were changed gradually from day to day.

Q. Did it also require you to make any different instructions to your junior operators? A. Well, there is one thing that had been

changed on our absorber system. We had a new absorber system installed, new heat exchangers that operated differently from the time Mr. Rodgers left until the time he came back.

185 Q. Give me examples in the way you do instruct or direct work for your junior operators? A. We have two men. One takes care of the compressor house, the cooling tower, and the other operator takes care of switching our freeze-outs, purification systems, taking care of the coilers, slowing down the boilers, cooling and warming absorbers. We have another operator which takes care of the pumping of tanks, the pumping of trailers, of high-pressure trailers, of loading liquid trailers and of making sure that all of our gas is quality controlled. In other words, it is all kept pure.

Q. Mr. — A. (Interrupting) These operators switch back and forth from day to day. Like the operator that is in the compressor house one night, he will be on the other side of the plant through our own choosing.

TRIAL EXAMINER (interrupting): Did he do it before?

THE WITNESS: I don't know how they did it. When I started breaking in as a junior operator I think I worked two days in the compressor house and two days on the other side of the plant, but it was through our choosing so we could learn the operation of the plant.

TRIAL EXAMINER: You still had the cooling house and everything?

THE WITNESS: Yes. The changes had been mainly in the quality of the gas, the way the plant was having to be run. We had installed —

186 a new compressor, I think was being installed the time Rodgers came back, which we started using to pull more gas into our plant. It was just from the time I started on operations; it was altogether different, which it is getting more different every day than it was when Mr. Rodgers came back.

Q. (By Mr. Marvin Martin) While these changes were being made, did it require you to reorient yourself day by day through this eight- or ten-month period while Rodgers was gone? A. Yes, and we still do.

TRIAL EXAMINER: What do you mean by that, Mr. Martin, what is this reorient yourself?

Q. (By Mr. Marvin Martin) Do you have to familiarize yourself with the new procedures day by day to take care of these changes as they occur day by day? A. Yes, sir.

TRIAL EXAMINER: What are they? Do you have a piece of paper and every hour you are supposed to mark something down?

THE WITNESS: We do have; we take readings on this control panel every two hours.

TRIAL EXAMINER: The same kind of readings you used to take?

THE WITNESS: The readings had been changed from the time Mr. Rodgers left and came back. We had revised the sheets and they had been changed.

187 MR. ROBERT MARTIN: Your Honor, let me suggest something that might shorten something.

MR. WACKNOV: I object to suggesting something to the witness.

TRIAL EXAMINER: No, Mr. Martin is suggesting something to me.

MR. ROBERT MARTIN: Maybe we have misled the Court and everybody has by not making a point of this at the beginning. This is an almost completely automated plant and one in which —

MR. WACKNOV (interrupting): There has been an opening statement here and I object to any opening statement at this time. This will be the fifth one. They can present their witness, but I don't see why —

MR. ROBERT MARTIN (interrupting): We can take three days to do what we can do in a half hour.

MR. WACKNOV (continuing): — why he has to explain what this witness is going to testify to.

TRIAL EXAMINER: I don't believe there is any secret about what these men have to do, Mr. Wacknov. I believe if any of these witnesses testify to something he doesn't do, we can go to the plant and check this. A stipulation is available in areas like this.

MR. WACKNOV: I will stipulate.

TRIAL EXAMINER: I have seen many plants and I want to find out what these so-called changes are. All I have are conclusions that

188 there were changes, differences in procedures and the complete reorientation.

MR. ROBERT MARTIN: I would suggest we might do what Judge Brown requested we do, which worked out to be a good thing to do in the contempt case. The plant is not too far away. This is an automated plant in which electronically the machinery is contrilled and there has to be carefully maintained tolerances.

TRIAL EXAMINER: What is the difference in the senior operator's work?

MR. ROBERT MARTIN: Mr. Tyler is the plant engineer. We can get it by Mr. Smith and we can get it by an inspection of the plant and Mr. Tyler can point out how it operates. I want to say this particular type of plant and equipment, this is the largest plant of its kind and there are many new operations here from the standpoint of the entire industry and it is a very complicated operation, and what was happening was the plant wasn't running and that is why these changes were made. I can put Mr. Tyler on the stand and probably explain or have him tell us what the changes were and what the situations were.

TRIAL EXAMINER: I don't believe that would be necessary. The only thing that is important in this case is for this witness to tell me how much trouble it was to reorient Mr. Rodgers and what he did with respect to it, and that is the only pertinent thing. We can assume there was a change in the plant. We assume these are intelligent men

189 and they adapted themselves to these changes. I don't believe

anybody went back to college to learn to do this work. What I would like to know from this witness is what he did with Mr. Rodgers when he came back to work and what Mr. Rodgers did with him.

THE WITNESS: May I make a statement to you on this point?

This plant, when I first started working on board, is as much different — there is enough difference that I believe I could come in there now, having never seen the board, I would learn to run the plant better right now and learn to run it the way it is running now than if I had been in there previously and run the plant before I had ever seen it.

TRIAL EXAMINER: How long would it take you to do that?

THE WITNESS: That would be hard to say.

TRIAL EXAMINER: One or two days?

THE WITNESS: You couldn't do it in one or two days. You couldn't do it in two months.

TRIAL EXAMINER: You couldn't?

THE WITNESS: No.

TRIAL EXAMINER: What is different?

THE WITNESS: Well, the plant is just running that much different.

TRIAL EXAMINER: What are your duties that are different? What do you do between 8 and 9 o'clock in the morning?

THE WITNESS: I control my plant.

190 TRIAL EXAMINER: How do you control the plant?

THE WITNESS: By operating automatic control valves which are on board.

TRIAL EXAMINER: Tell me about the board. You reach out and turn a valve on and a certain needle points to a certain point?

THE WITNESS: We have temperature and temperature recorders.

TRIAL EXAMINER: When you reach a certain temperature you do something?

THE WITNESS: Right.

TRIAL EXAMINER: How do you know you are to do that?

THE WITNESS: That is what — we are running the plant mainly by guess, mainly by what we are trying to find out.

MR. ROBERT MARTIN: I recommend you look at this plant.

THE WITNESS: If you are not a good guesser, you can't run it.

TRIAL EXAMINER: You know in advance the things you are going to do each day?

THE WITNESS: No, not exactly. You go home and you lay awake all night trying to figure out things you are going to do in advance and then, you come back and you might do something different. The plant is hard to run.

TRIAL EXAMINER: Tell us about your association with Rodgers those three days.

THE WITNESS: Just like I said, Mr. Tyler had brought Mr. Rod-
191 gers in there and told me to try to reorient him and to treat him like I would a new employee that I was trying to train on the board, and I believe I did just that to the best of my ability, not only for two days —

TRIAL EXAMINER (interrupting): What did you tell Rodgers?

THE WITNESS: I tried to tell him every change I made on the board and why I was doing it.

TRIAL EXAMINER: When he first came to work?

THE WITNESS: Like Mr. Rodgers said, Mr. Rodgers had helped me and I admit it.

TRIAL EXAMINER: Why would it be embarrassing to him?

THE WITNESS: I believe I did make that statement. It looked to me like —

TRIAL EXAMINER (interrupting): Then, you would make a move and you would tell Rodgers why you were making it?

THE WITNESS: Yes.

TRIAL EXAMINER: You did that for how long?

THE WITNESS: I did that for not only two days, but all the days Mr. Rodgers worked with me, at least the time he showed interest he would like to know.

TRIAL EXAMINER: How could you tell if he showed interest?

THE WITNESS: He was over at the control panel where I was at and I made a move.

TRIAL EXAMINER: Did he follow you around?

THE WITNESS: Not all the time; he did for a while. I would take
192 him out in the plant and tried to show him the changes that had been made since he had been gone.

TRIAL EXAMINER: Did he watch you?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Marvin Martin) Did Rodgers' attitude change any after he had been there for a while?

MR. WACKNOV: I will object to that.

TRIAL EXAMINER: Sustained.

Q. (By Mr. Marvin Martin) How did Rodgers act in response to this instruction which you were giving him?

MR. WACKNOV: Objection.

TRIAL EXAMINER: What did he do.

Q. (By Mr. Marvin Martin) What was his response? A. Mr. Rodgers came in there, and at the beginning I figured he was trying to, actually trying to learn the plant and, then, after a few days I began to wonder if he didn't have other interests on his mind other than learning.

MR. WACKNOV: I object and move it be stricken.

TRIAL EXAMINER: I will leave it in the record because I want to find out what led you to believe that. What did Rodgers do that caused you to believe that?

THE WITNESS: Maybe going off on the PA system and auctioning off an MEA system in the plant. He liked to be an auctioneer, so he was

on a PA system, or auctioning off an MEA system in the plant, so that
193 didn't lead me to believe he was interested in the company.

Q. (By Mr. Marvin Martin) While he was at work he did this? A. Yes.

Q. On company time? A. Yes.

TRIAL EXAMINER: Did Mr. Angle know about it?

THE WITNESS: I don't know this.

TRIAL EXAMINER: You didn't?

THE WITNESS: Everybody on my shift knew it.

TRIAL EXAMINER: On the PA system?

THE WITNESS: Yes, which was used to notifying you needed a change.

Q. (By Mr. Marvin Martin) What else led you to believe he wasn't interested?

TRIAL EXAMINER: Why did you think that proved he lost interest, not following you around?

THE WITNESS: I didn't say he followed me around. I said for a time he was up there acquainted closely to the board or in front of the board and when I made changes he would ask me or I would tell him the changes I would make.

TRIAL EXAMINER: When wouldn't he follow you around, when you left the board?

THE WITNESS: Well, I won't say he didn't follow me around. I think I went out in the yard several times, maybe not too many, but
194 on a few occasions I have.

TRIAL EXAMINER: What were you doing when he was auctioning off the ME equipment, whatever that was?

THE WITNESS: I was trying to control the panel.

TRIAL EXAMINER: You were standing at the panel and working the dials and making the necessary movements when he was doing that?

THE WITNESS: I might have been sitting at a desk.

TRIAL EXAMINER: Almost anybody knows how to sit at a desk.

THE WITNESS: There is times you don't have to be at the panel.

TRIAL EXAMINER: I want to find out why you thought his auctioning off something indicated his lack of interest in trying to find out how to run that control panel.

THE WITNESS: I figure if a guy has time to auction off some part of the plant he doesn't have interest. He could have been spending his time looking at a book or looking at a control panel.

TRIAL EXAMINER: I wanted to find out why you thought he was goofing off.

Q. (By Mr. Marvin Martin) Did you ever ask him if he was able to run the control panel? A. I gave him one opportunity one day to control the panel.

Q. When was that? A. I can't recall the date.

195 Q. How did he get along? A. He got along fine on that particular day up until the exception we started to change the filter on, the medial pressure filter on the helium compressors.

Q. What happened? A. The filter we went into was plugged up. I was standing there at the time the filter was changed and I had to take a hold; Mr. Rodgers didn't seem to know the moves to make. That is the only time I controlled the panel that day was when we changed the filters.

Q. What else happened that made you believe that Rodgers wasn't, didn't seem to be trying to learn. Did he ask you any questions? A. He asked me questions at times.

TRIAL EXAMINER: What kind of questions? Did he ask you whether he thought the Packers were going to beat the Brown or what you were supposed to be doing?

THE WITNESS: He asked me questions about the plant. Sure, we talked of other things other than the plant that any bunch of employees will do, but he did ask me questions concerning the plant.

Q. (By Mr. Marvin Martin) Did you have other junior operators there that were trying to learn the board also? A. Yes.

Q. How would you compare their interest as compared to Mr. Rodgers'?

196

MR. WACKNOV: I object to comparison of interest between people.

TRIAL EXAMINER: You will have to tell what they did that he didn't do.

What did your —

I don't know whether you should say other junior operators; I don't think Mr. Rodgers came back as a junior operator.

MR. MARVIN MARTIN: No, as a senior operator.

TRIAL EXAMINER: What did the others do that Rodgers didn't do?

THE WITNESS: The other junior operators were not in Mr. Rodgers' position. They were learning the outside and learning the compressor house. We had one quality control operator which we are and have been trying to teach to run the board in which, on my shift, I have tried to teach him in the same manner that I was trying to teach Mr. Rodgers.

Q. (By Mr. Marvin Martin) My question is this. Did this quality control operator, did he ask more questions or different types of questions?

MR. WACKNOV: Objection. He was not a senior operator; Mr. Rodgers was.

MR. ROBERT MARTIN: The witness testified they were both trying to learn to run the board.

TRIAL EXAMINER: Yes, but there may be a difference of knowledge of questions. You will have to make the question a little

197

sharper.

A. Probably, the junior operator that was in there trying to run the board, some of these fellows came fresh off the farm and had no

knowledge of any automatic equipment such as this type and they asked questions probably considerably different than the questions Mr. Rodgers might have asked because he had been acquainted with plants of this sort at other times.

Q. (By Mr. Marvin Martin) You are saying they are not comparative? A. Actually, some of the time they were. After they had been there for a while and began to learn the things that were going on, the questions they asked may have compared with the questions Mr. Rodgers asked.

Q. Do you have an opinion whether Rodgers was ever able to take the board over after he came back?

MR. WACKNOV: I object.

TRIAL EXAMINER: I will sustain the objection.

THE WITNESS: May I answer that question?

TRIAL EXAMINER: No, you don't answer the question. It is calling for opinion evidence.

MR. ROBERT MARTIN: A person in a position of an instructor ought to be able to express an opinion.

TRIAL EXAMINER: I can decide whether the questions should have been asked or not asked from the testimony this gentleman gave.

198 Q. (By Mr. Marvin Martin) What did Rodgers do in the way of work or activities when he would come to work there during the day? I am talking about after he was reinstated. A. There were times Mr. Rodgers would take the readings on the board and he did this to reorient himself. The readings had been changed, the procedure of taking this had been changed, the sheets had been revised, and he took these readings of his own free will.

TRIAL EXAMINER: Did he take them accurately and record them accurately?

THE WITNESS: I think so, with help. We had to train him; we had to teach him to take these readings. After a period of time he got to where he could take them accurately.

Q. (By Mr. Marvin Martin) Were you out there when Mr. Tyler had a conversation with Rodgers and asked if he was ready to take over the board? A. Yes, I believe I was.

Q. When was that? A. I can't remember the date. It was probably a day or two before I turned the board over to Mr. Rodgers for one day.

Q. What was that conversation? A. He just asked Mr. Rodgers if he thought he was ready to take over the board.

Q. What did Rodgers answer?

199 A. Mr. Rodgers said he hadn't had proper training; he didn't figure he had proper training, but he would be willing to try it.

Q. It was shortly after this you let him try it one day?

A. Yes.

Q. In the event that control panel is operated improperly, do you have a term called "the plant going down"? A. Yes, sir.

Q. If the control panel is operated improperly, can the plant go down? A. Yes.

Q. What do you mean by "going down"? A. When the plant goes down it means like we would lose an engine; an engine would just die, which has happened consistently. We never had this happen at the time Mr. Rodgers was training with me. I don't believe we ever lost an engine while he was training with me. We may have; I don't believe we have. When you lose one engine, if you do not control the plant properly and if you do control it properly, you stand a chance of losing the other engine. If you lose the other engine it will cause the helium engines to go down, and when you have four engines down the plant will go down.

Q. Is there a specific routine you follow when you feel the plant is going down or is this a matter of judgment on the part of the senior operator?

200 A. I think every senior operator would have a specific routine set up he would use and at times there would be adjustments made to these routines; it is according to the circumstances.

Q. Your judgment would dictate exactly what to do? A. That is right.

Q. Do your operators operate differently on that? A. I think we are pretty well on the same line, operate pretty well the same line.

Q. How large is this board you are referring to, this control board? A. I believe it must be about probably 18 feet long or 20 feet long, or something like that.

Q. Is it a mass of dials and gauges, and so forth? A. About a hundred forty some odd, I believe, or a hundred fifty-two, something like that.

Q. Are the temperature controls, the temperatures which were controlling, are they different now than they were when Rodgers was there the first time? A. You mean the temperaturings we're controlling?

Q. Yes, do you have different temperature variances? A. We have considerably different temperature variances, yes. They varied also at the time he was there and they still vary from day to day now.

Q. What about your pressures?

201 A. The pressures is -- they change considerably, too.

Q. The pressure during Rodgers' second employment, was it different than the first employment? A. I can't say that because we may go out today and the pressure is different than yesterday.

Q. Is this what you mean when you say you have to guess; is that your term for judgment? A. That is right.

TRIAL EXAMINER: Did you teach Mr. Rodgers or point out to him the difference in the pressures?

THE WITNESS: I think we probably discussed unit pressures and different pressures in the plant.

TRIAL EXAMINER: Did you teach him the routine to follow if anything went wrong?

THE WITNESS: I believe so, to the best of my knowledge. I told him to the best of my ability; I am sure of that.

Q. (By Mr. Marvin Martin) Did Mr. Rodgers ever tell you he was ready to run that board? A. Not come right out and tell me, no.

Q. Did Rodgers ever tell you you weren't instructing him properly? A. I don't believe so.

Q. Did Rodgers ever tell you there were more things you could do to help him learn better? A. No.

202 Q. Did Rodgers ever complain about the reorientation you were giving him? A. No, sir.

Q. Did he ever complain you were treating him unfairly? A. No.

Q. Did he complain to you that other senior operators were not instructing him properly? A. He never talked to me about the other senior operators.

Q. Did he complain in any way about any treatment he was getting at the plant? A. I never heard him complain of any treatment he was getting at the plant.

Q. To you, he never said anything to you? A. Not to me.

Q. You have some other men out there you are attempting to get on the control board, have you not? A. Yes.

Q. What is the name -- give the name of one of those men?

A. George Friedenberger.

* * * * *

206 TRIAL EXAMINER: * * * Did you tell Tyler or Angle, Mr. Tyler or Mr. Angle, that Mr. Rodgers didn't seriously attempt to retrain himself?

THE WITNESS: I believe I might have made the statement that

207 at the beginning of his training period that I thought he was, in my own mind.

TRIAL EXAMINER: The beginning?

THE WITNESS: Yes.

TRIAL EXAMINER: What did you base it by?

THE WITNESS: The questions he previously asked. The questions began to ease off and I wasn't getting as many questions from him and not as many attempts to learn to operate the panel.

TRIAL EXAMINER: I asked you, did you tell Mr. Tyler or Mr. Angle?

THE WITNESS: I told him I thought he was trying to start in with —

Q. (By Mr. Marvin Martin — interrupting) What did you tell them later? A. That the questions had eased off and it didn't — apparently, he wasn't trying to learn as much about it as he was when he first came out there.

* * * * *

215 MR. ROBERT MARTIN: I would like to read from the record in the contempt case and offer as evidence in the Respondent's case evidence of the correctness of the statements in the letter that false reports were given to the government inducing — during the contempt action for the purpose of proving exactly that and the representations

216 of officer of the court and what was told them by Mr. Rodgers.

TRIAL EXAMINER: Very well.

MR. WACKNOV: This is a double-barrelled type thing.

Are you saying the men from the National Labor Relations Board statement was inconsistent with Mr. Rodgers' and, therefore, Rodgers is lying?

MR. ROBERT MARTIN: No. I am saying your statement is offered for the purpose of showing — this statement is offered for the purpose of showing that Mr. Rodgers was giving reports to you which you were giving to the court during the contempt proceeding, which is inconsistent with everybody's evidence.

TRIAL EXAMINER: How do you conclude they are inconsistent?

MR. ROBERT MARTIN: It is apparent from the statement. I would like to make an offer of it.

* * * * *

217 MR. ROBERT MARTIN: This is from the transcript of the hearing in the civil and criminal contempt action held in Wichita, Kansas, before the Honorable Wesley E. Brown on the fourteenth day of August, 1967, which is almost a month after Mr. Rodgers came back to work. This is part of what was said by Mr. Mestal, commencing at page 27; Mr. Mestal is the United States District Court secretary of the N.L.R.B., General Counsel's office, and also by Mr. Wacknov.

MR. WACKNOV: This is not the court hearing.

MR. ROBERT MARTIN: This is a pre-trial conference, and I am quoting, "We talked to Mr. Rodgers." Turning to Mr. Wacknov, "When was it you talked to him, last Thursday"? Mr. Wacknov, "I don't remember; I have talked to him several times." Mr. Mestal, "All right, last week several times, the middle of last week, and as of that date Mr. Rodgers is still being retrained. He hasn't been made a senior operator; he is kept essentially in a room, although once in a while they take him out and show him what is in the plant, but he has made an object lesson of the employees that you are not reinstated but rehired. Yes, not reinstated in accordance with the court's order. From all indication he may be retained forever at the

218 present inclination."

* * * * *

223 TRIAL EXAMINER: It seems to me that Mr. Rodgers was giving statements to the government that were not the same as he gave testi-

224 mony here.

* * * * *

TRIAL EXAMINER: You understand the Respondent; he was put at great expense and fear based upon testimony allegedly or purportedly given to the United States government lawyer, which later on turns out to be false or not the same.

MR. WACKNOV: That is his contention.

TRIAL EXAMINER: That is what I hear here. Mr. Rodgers hasn't said anything on the stand that shows he was kept in a cubicle.

* * * * *

228 Whereupon,

HENRY TYLER

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give us your name and spell your last name.

THE WITNESS: Henry Tyler, T-y-l-e-r.

DIRECT EXAMINATION

Q. (By Mr. Robert Martin) Where do you live? A. In Great Bend, Kansas.

Q. What is your job or position at the present time? A. Plant manager for Kansas Refined Helium Company in Otis, Kansas.

Q. What are the general duties of the plant manager?

A. There are many, particularly in a plant as small as this. You have to get involved with all facets, see that the plant stays on stream and produce as much as you can. It involves personnel, engineering, maintenance, sales to a degree, cost control, et cetera.

Q. Mr. Tyler, did you occupy the same position in the summer and fall of 1967 that you now do? A. Yes.

Q. And you were performing substantially the same duties?

A. Yes. In August of '67, I believe it was August when Mr. John Stiff

229 left, and at that time my title changed; my duties changed very little except I am more involved with maintenance now.

Q. He was the maintenance manager? A. Yes.

Q. You assumed part of his duties? A. Yes.

* * * * *

233 Q. (By Mr. Robert Martin) Now, when Mr. Rodgers came back to work on July 19, did he report to you? A. Yes.

Q. At what time? A. I don't recall the exact time; shortly before 8.

Q. Right about 8 o'clock on the morning of July 19? A. Yes.

Q. Would you tell me what you said and did with Mr. Rodgers when he reported? A. Yes. He had a letter with him, a letter from Mr. Angle. I said, "I don't need that, you are temporarily reinstated under Judge Brown's orders." I expressed my decision that he had to be reoriented. I felt the best way to start was coloring the flow sheets, et cetera. I arranged for flow sheets and operation manuals. I took him into Mr. Harms' office and said he could use that and told him that Harry, Mr. Harms, was on vacation and also that we were moving in a large engine, a new compressor engine, that week and my time was going to be very limited and Harry was on vacation so he wasn't going to be there, so my time was going to be limited for the next few weeks and I wouldn't be able to spend much time with him. Then, this is

234 when I asked him to write out the answers to these series of questions that we had generated for all the other operators.

Q. These were questions about plant process and methods of handling the plant? A. Yes.

Q. Had they been presented to other senior operators? A. Yes.

Q. All right. A. That was about it. As I was beginning to leave he asked if he could get a cup of coffee. I first said yes, and then, I said, "No, wait, the people don't know you are here, and in order to avoid any embarrassment let me tell them you are here first."

Q. What did you do then? A. I left. I went out, I believe; I believe Mr. John Wakulich was senior operator on duty. I was back within 30 or 45 minutes.

Q. Did you have other duties to attend to in the plant? A. Yes. The first thing in the morning I always make a tour of the plant.

Q. Go ahead. A. In any case, within 30 or 45 minutes I went back and told him he could get a cup of coffee.

Q. He said you were gone an hour and a half and you said you
235 were gone 30, 35 minutes? A. Yes.

Q. Did Mr. Rodgers go get a cup of coffee? A. Yes.

Q. Now, from that time on until Friday did you have any discussions with Mr. Rodgers about his leaving the room or where he could go or his freedom to go about the plant if he wanted to, anything come up about that? A. No, the question wasn't raised. One day in there, I am not sure which day it was, I took him on the tour of the plant.

Q. To show him new equipment; was that the purpose of the tour? A. Yes. I believe it was Friday. I am not sure of the date.

TRIAL EXAMINER: You took Mr. Rodgers with you on a tour of the plant?

THE WITNESS: Yes, I took quite some time. We went over all the physical changes in the plant, not all of them, of course, but the major ones.

Q. (By Mr. Robert Martin) How many physical changes had there been in that plant? A. Physical changes?

Q. Between the time Rodgers left and came back. A. Some of minor significance and some of major significance.

Q. Name the major ones as best you can without taking too much time; explain how they influenced the operation of the plant, whether
236 they contained new methods. A. From a physical change one of the physical changes was in our purification system we have our absorber, charcoal absorber beds. We installed two new heating exchangers there and rearranged the others and these exchangers are used in the regeneration of the charcoal beds. You have the bed on stream for 48 hours, then, take it out. It runs at a temperature of minus 300 degrees and you take it off stream and you wash it up and you evacuate it and hold the vacuum for eight hours and then you have to cool it back down. The basic philosophy hasn't changed in that you have to warm up. The equipment with which we did this was changed.

Q. Completely changed, would you say, substantially different than it had been before? A. Yes.

Q. Name some of the other changes. A. We had added, I believe we had added one boiler totally.

TRIAL EXAMINER: One what? THE WITNESS: A. boiler. A. (Continuing) I am not sure whether we changed the other boiler before or after he left in September. That was before. But we built in addition to the boiler house, added a boiler in there with a various feed pump arrangement. We added two new feed pumps, the parallel arrangement of the boiler operation. Also in there we have added a crude helium compressor.

237 Q. (By Mr. Robert Martin) You mean in the plant? A. Yes.

Q. As a matter of fact, you added the use of crude helium after Mr. Rodgers left and before he returned? A. Yes. This machine has a different function than the other. Originally, the plant was designed to handle contaminated and impure products through puring systems. While Mr. Rodgers was gone we added a different compressor other than pure products compressors; we went and repiped sections of the pure products, storage, transfers and what have you and we designated and created a contaminated storage tank. The other crude helium, this is where process and operations problems come in. When you take your feed gas and you have an infinite number of mixtures that you can feed to the plant, most any plant has consistent feed stock at least of your final product. But in this plant we have the ability to increase or decrease percent helium into feed gas and this changes the complete material and refrigeration balance throughout the plant. The only problem is there are infinite settings of this mixture, to get the most out we have to run what we can run at mixture; this depends on whether we are loading trailers or things of this nature, whether we get a gain on our material valves.

TRIAL EXAMINER: How do you learn the content of this gas?

THE WITNESS: We have analyzers.

238 TRIAL EXAMINER: Is that on the instrument panel?

THE WITNESS: Yes. However, one of the fallacies we have is we do not have the analyzers in the right place. In order to operate the plant in which you have this enriched helium you have a lot of natural gas for the refrigeration balance so we have to recirculate natural gas so there is this area where there is no flow meter nor means to tell how much we are circulating except by a material balance by three other meters. We can't really tell what the composition of our feed gas is because we make natural gas lane and we are circulating feed gas that doesn't have this natural gas in it in the proportion to what our natural gas is plus the crude helium that is coming in. We have also found we are unable to run and make nitrogen and one of the things we did was to recirculate nitrogen so, now, we have the feed gas, crude helium, recirculated natural gas and nitrogen.

Unfortunately, there is no way to set a standard operating procedure that you are going to operate at these temperatures and pressures.

Q. (By Mr. Robert Martin) This change that results in this variance in feed gas by recirculating, by adding crude helium and recirculating methane and gas free of liquids, and so forth, were these changes that were made after Mr. Rodgers left but before or at the time he came back? A. Yes.

239 Q. These variables you are talking about that are plaguing the operation of the plant are things that developed during Rodgers' absence? A. Yes.

Q. Are these the things plus the fact that he had been away for ten months that caused you to feel he had to be retrained before he could take over the control of the shift and operate as a senior operator? A. Yes.

* * * *

240 Q. (By Mr. Robert Martin) Did you have an opportunity to observe Mr. Rodgers during the period between July 18 when he first came back on duty and September the 19th when he was suspended and ultimately discharged; were you in the plant working? A. Yes.

Q. And were you in the control room when he was there on duty? A. Yes.

Q. What, if anything, did you observe about his attitude and conduct with respect to retraining. What was your observation?

MR. WACKNOV: I object to this question as leading and irrelevant and immaterial.

MR. ROBERT MARTIN: It isn't leading.

TRIAL EXAMINER: Let's see what the witness can testify to.

241 Go ahead and answer.

A. I could only testify about what my relationship was with him and what other people told me. My relationship was that there is this area as mentioned earlier that this was something that had never been done before, how much he trained the fellow. I took the approach that while, let's start from scratch and this is what I asked Mr. Rodgers, what he knew, what he recalled and what he didn't.

TRIAL EXAMINER: You knew what he knew already?

THE WITNESS: I didn't know how much after a year, ten or eleven months. I didn't know how much he retained. You can take a long weekend from that plant and come back and wonder where you are. I kept trying to get a feel and this is when he was noncommittal.

TRIAL EXAMINER: When did he say that. Did he tell you he was noncommittal?

THE WITNESS: No, this is what he said not to me, but to me he never wouldn't be interested.

MR. WACKNOV: Well, well, well —

TRIAL EXAMINER (interrupting): Tell us what was said.

THE WITNESS: That is the problem; he never said anything.

TRIAL EXAMINER: At no time?

THE WITNESS: Not about process. I asked him, for example, once I asked him how we could speed this up, speed up the reorienta-
242 tion. I offered the suggestion –

TRIAL EXAMINER (interrupting): What did he say to that?

THE WITNESS: He said nothing. Mr. Harry Harms was in my office.

TRIAL EXAMINER: Is this the first time you asked him this question?

THE WITNESS: I don't know that it was the first time; I asked him several times.

TRIAL EXAMINER: When you asked him the first time what did he say?

THE WITNESS: I don't recall he said anything. He was non-committal.

MR. WACKNOV: I object to this use of the word "noncommittal."

MR. ROBERT MARTIN: He can use his own language.

THE WITNESS: He didn't respond.

TRIAL EXAMINER: The first time you asked him he didn't say anything?

THE WITNESS: I don't know about the first time. I don't recall any time.

TRIAL EXAMINER: You heard his testimony; you have been here all during the trial? THE WITNESS: Yes, sir.

TRIAL EXAMINER: Did he make a suggestion to you the first time you asked him, the first time you may have asked this, how to
243 speed up? THE WITNESS: No, sir.

TRIAL EXAMINER: You never heard him say anything about working the board to do the job while he was training?

THE WITNESS: Working the board, no, sir.

TRIAL EXAMINER: And do the job while he was on training?

THE WITNESS: No, sir.

TRIAL EXAMINER: Under supervision?

THE WITNESS: No, sir. At one point I did propose, in one of these conferences with him, I did propose I put him out with a junior operator, specifically, Mr. Don Foose.

TRIAL EXAMINER: What would you want to put him with a junior operator?

THE WITNESS: So he could reorient himself with the outside. This new procedure in regenerating, he has to tell the junior what to do.

TRIAL EXAMINER: You were training him for a senior operator?

THE WITNESS: He has to know the outside functions in order to direct the junior operators. May I give an example?

TRIAL EXAMINER: Yes. I was wondering why you didn't send him out with a senior operator on the outside function.

THE WITNESS: I didn't do it, sir; I proposed it to him and I got no reaction from him.

MR. WACKNOV: I object to this, no reaction.

244 TRIAL EXAMINER: Did he say something to you?

THE WITNESS: No. He would shake his head; he never proposed that he go outside on the job, no, sir.

TRIAL EXAMINER: I am sorry, Mr. Martin.

Q. (By Mr. Robert Martin) Is it necessary that a senior operator understand how the equipment that he is controlling through telling junior operators what to do how it works and the steps necessary to conduct one of these operations out in the plant be carried out?
A. Yes.

Q. In order to give the proper instructions? A. Yes. Well, there are areas when a senior has to make decisions if there is a problem. I use this regenerating system, there is a leaky valve and you can't get the things depressured; the senior has to say, "Let's check this valve, let's blow up the atmosphere, let's shut it in."

Q. He must know everybody else's job to give proper direction? A. Yes.

TRIAL EXAMINER: That is why you sent him up with senior operators?

THE WITNESS: The juniors?

TRIAL EXAMINER: Mr. Rodgers.

THE WITNESS: Yes.

TRIAL EXAMINER: To learn how to be a senior operator.

245 Q. (By Mr. Robert Martin) When one of these happens like you described, the senior operator doesn't go out in the plant to do this? A. No; on occasions he may.

Q. But normally, he wouldn't? A. No.

Q. Who is out doing what has to be done out in the plant? A. The junior operators.

Q. So, if a man was going to learn how a certain part of the plant system out there worked, the man that he should be with learning it would be a junior operator, regardless of his category; if he didn't know it that would be the way to do it? A. I don't understand.

Q. Take the example you gave. It is the junior operator that does perform the work on that system? A. Yes.

Q. If a person wanted to learn how this piece of equipment or series of pieces of equipment were operated, under those conditions it would be a junior operator he would accompany, not normally a senior operator? A. Well, yes. He could go out with a junior. A junior normally does it.

Q. If it was a new piece of equipment or a new plumbing system or something it would make sense for him to go with the junior opera-

246 tor in order to understand how it operated? A. Yes. This is what I suggested. This is not what I did.

TRIAL EXAMINER: Why didn't you do it?

THE WITNESS: I was proposing it. I didn't send Mr. Rodgers out with the junior operators for two reasons. This gets back in the

area you have something that is new, what do you do? It is a matter of judgment or you are going to be in court on a contempt. If you retrain they can say it is unnecessary; if you don't retrain and he goofs, that is unnecessary.

TRIAL EXAMINER: We are assuming the retraining was unnecessary.

THE WITNESS: My point here is I felt it would be desirable for him to go to the junior operator because the junior could spend more time with him. However, if I had done that he and the N.L.R.B. could have said I object to him doing junior operator work; this is contempt.

Q. (By Mr. Robert Martin) Your boss was charged with criminal contempt? A. Not for that.

Q. But on other matters? A. Yes.

TRIAL EXAMINER: You really thought it would have done some good to go out in certain instances with a junior operator?

247 THE WITNESS: Yes, in certain areas.

TRIAL EXAMINER: Did you put that to Mr. Rodgers in that way?

THE WITNESS: I suggested it once.

TRIAL EXAMINER: How did you suggest it?

THE WITNESS: I said, I don't know, we were talking about what is the best way to do this, how to expedite it.

TRIAL EXAMINER: To do what?

THE WITNESS: His retraining.

TRIAL EXAMINER: You only needed him on a junior operator for one instance for a certain kind of job?

THE WITNESS: There are many, many standard functions outside that the junior operators do by themselves.

TRIAL EXAMINER: Is there any senior operators out there where the junior operators are?

THE WITNESS: They can be, yes.

TRIAL EXAMINER: Where would they be if they weren't?

THE WITNESS: In the control room or over in the compressor house.

MR. ROBERT MARTIN: The control room is separate from these other areas we are talking about.

TRIAL EXAMINER: Is there only one senior operator on duty at a given period of time?

THE WITNESS: Yes.

TRIAL EXAMINER: And four junior operators?

248 THE WITNESS: Three junior operators. The junior operators rotate on their functions out in the plant area, in the compressor house and what we call the outside.

TRIAL EXAMINER: You thought it was important he should know what the junior operators were doing out there because he would not have known; his past experience wouldn't have told him that, would it?

THE WITNESS: I don't understand your question.

TRIAL EXAMINER: Would his past experience have told him what the junior operators were doing out in the plant away from the control panel?

THE WITNESS: Yes, I am sure it would have to a degree.

TRIAL EXAMINER: To a degree it is necessary you could have sent him out to learn what these men were doing, couldn't you?

THE WITNESS: Yes, sir, I could have.

TRIAL EXAMINER: So, you asked him if he thought that was necessary.

THE WITNESS: I suggested it, yes. I got no response.

MR. WACKNOV: Again, I object, he got no response.

TRIAL EXAMINER: What did he say?

THE WITNESS: I don't recall him saying anything. I think he shook his head.

TRIAL EXAMINER: He didn't say that would be one way of doing it, you don't recall that?

249 THE WITNESS: No, sir. I elected not to, though.

TRIAL EXAMINER: You elected not to send him?

THE WITNESS: Yes.

Q. (By Mr. Robert Martin) Why did you elect not to?

MR. WACKNOV: I object.

TRIAL EXAMINER: He has given an opinion as to why.

Q. (By Mr. Robert Martin) In any event, when you asked him that he didn't give you an affirmative response. He didn't say, "I am willing to do that"? A. No.

TRIAL EXAMINER: You wouldn't have to get an affirmative response from him on any training program you wanted to send him on.

THE WITNESS: No, I was trying to get a feel where he felt the need of all these changes I had shown him for some reorientation.

TRIAL EXAMINER: You are the only one of the two people, you and Mr. Rodgers, that would know what these men were doing out there that he didn't know about before. How would he know they were doing something different before? You are asking a man do you think it would do any good to go do something you know about.

THE WITNESS: No, sir. At this point he had gone through the flow sheets to see the changes. I had taken him on the tour of the plant; in some instances he had been out to observe the equipment. I

250 was asking him was there any areas you don't understand about this; do you know how that works.

TRIAL EXAMINER: It is like the teacher telling the class, "Those of you who are absent, please turn in your names as you leave."

MR. ROBERT MARTIN: I don't think it is that at all.

TRIAL EXAMINER: How can you ask a man who you say may not know what is going on out there if he knows what is going on out there?

THE WITNESS: You can about specific items or specific things. How do you test people, sir?

TRIAL EXAMINER: How were you testing him?

THE WITNESS: We had these questions but on these specific things you can say do you understand this or are there any areas —

TRIAL EXAMINER (interrupting): You can't say are there any areas you don't understand because how does he know that?

THE WITNESS: He could say, "How does the flow go this way, because the pressure is less over here than over there"?

TRIAL EXAMINER: If he didn't understand it, he would probably ask you that?

THE WITNESS: Yes.

TRIAL EXAMINER: He didn't ask you any of these questions, did he?

THE WITNESS: He asked some of other people but not of me.

251 I was primarily interested in the overall program.

Q. (By Mr. Robert Martin) On these occasions when you asked him or tried to find out from him what he knew and didn't know by whatever questions you asked him, what sort of response did you get? A. In general, very little response.

Q. Were you able to determine from what he said to you what he did or didn't know or what areas he might need more training in in order to enable him to complete his work? A. I got the best feel from that from the other senior operators.

Q. Were you able to get any definitive answers from him to make a decision as to where he needed more training or what might help in bringing him along faster? A. No, I didn't.

Q. Did you report this situation to Mr. Angle? A. Yes.

Q. That this was what was happening? A. Yes.

TRIAL EXAMINER: How did you report it?

THE WITNESS: By phone.

TRIAL EXAMINER: What did you tell him?

THE WITNESS: I said that I didn't feel that at various stages of the game — I said various things before he came; we talked about the reorientation program, the necessity of some of the possible out-

252 comes.

Q. (By Mr. Robert Martin) What were the reports that you gave Mr. Angle with reference to this situation, your attempts to find out from Rodgers what he knew and how he was getting along in the training, your estimate of how he was proceeding? A. I reported some of the actual conversations, general trend of the conversations; I did say on one occasion I didn't believe he was back in good faith. I didn't think he was being honest with us; I didn't think he was trying to get back in the groove and learn and get back in the job.

Q. You say you didn't think he was doing that? A. I said I didn't think he was.

TRIAL EXAMINER: Did you tell Mr. Angle the basis on which you made that judgment?

THE WITNESS: Yes, and along with these instances I reported.

TRIAL EXAMINER: What were the bases?

THE WITNESS: The attitude, I couldn't get any response from him and general matters. For example, I took, when we took him off the coloring flow sheets and going through manuals, I took him to the board; I said, "Now, you have had several weeks to go over the flow sheets. Do you feel you are ready to run control"? He said, "No, I haven't had the experience but since I came back I am willing to try." So, then, I told the senior operator, Mr. Smith was on that

253 day, I said, "You break Arel in on the board in a normal manner, you make the moves first, explain them to him. He will ask questions," and I told Mr. Rodgers to ask questions and then, I said, "It will progress to the point he is making the moves and you are monitoring what he is doing and suggesting" and, so, I did this. Within a few days Mr. Wakulich, one of our senior operators, within two times, as a matter of fact, said, "Arel isn't showing any interest."

MR. WACKNOV: This is hear —

TRIAL EXAMINER (interrupting): Go ahead; you can talk.

THE WITNESS: He isn't asking any questions. I can talk so much and that is that.

TRIAL EXAMINER: Was he monitoring the board all right when this senior operator was observing him?

THE WITNESS: No, I think one of the seniors, I am not sure which one.

TRIAL EXAMINER: Mr. Wakulich, when he was talking to you, was Mr. Rodgers monitoring the board or managing the board at that time?

THE WITNESS: No. He was out in the control room. That is what he was supposed to be doing, yes. The inference from Mr. Wakulich to me, he wasn't. He asked me, "How do I get him to ask questions"? I said, "You draw pictures and take a section and go through the front end and go back."

254 TRIAL EXAMINER: I don't understand. Mr. Smith was told by you to train Mr. Rodgers by turning the — doing things, taking a move and telling him what you did and after a while let Mr. Rodgers do it and monitor him. Were the other senior operators told to do everything?

THE WITNESS: Yes, sir. Mr. Rodgers was on daylights; every week the senior operator rotates.

TRIAL EXAMINER: Now, the other senior operators, when they came to work, did they know Rodgers was supposed to be manning the board and they were monitoring?

THE WITNESS: Yes.

TRIAL EXAMINER: Tell me why should he be asking them questions?

THE WITNESS: In the process, like I say, there are many things that have changed.

TRIAL EXAMINER: He had only asked a question if he didn't know what to do, isn't that true? If he made a mistake, wouldn't the senior operator correct it?

THE WITNESS: Yes.

TRIAL EXAMINER: So, he never would ask a question unless he didn't know what to do; he would just go and make a mistake, wouldn't he?

THE WITNESS: In that context, yes. But, for example, in the training of the senior operators, originally, all the senior operators and the training of the junior operators that are now coming on to the board,

255 you cannot cover every possibility that could exist for him and he had to do a lot of thinking about it and the manner in which it works and every man we have ever put on there, particularly in view of the change of circumstances —

TRIAL EXAMINER (interrupting): You are just like a Trial Examiner; he asks a lot of silly questions until he knows what he is doing.

Once he was operating the board I don't see why he would need to ask any questions and Mr. Wakulich comes to you and says he is not asking any questions, why should that alarm you?

THE WITNESS: Well, this is what I was trying to explain. The process had changed to significance that in gross areas it had not. You —

TRIAL EXAMINER (interrupting): What did the other senior operators do when they were monitoring Mr. Rodgers? What were they doing?

THE WITNESS: I don't know; I assumed they were making adjustments and telling what they were doing.

MR. WACKNOV: He doesn't know and I object to it.

TRIAL EXAMINER: What did they tell you?

THE WITNESS: I was relating this one incident where Mr. Wakulich came to me. One other time, I am not sure which senior it was —

256 TRIAL EXAMINER (interrupting): It must have been important, though —

THE WITNESS (interrupting): I am not sure on that point.

TRIAL EXAMINER: So, it is based on Wakulich telling you that the man wasn't asking any questions while he was operating the panel and your conversations with Mr. Rodgers asking him if he thought he ought to go out and learn something he didn't know.

MR. ROBERT MARTIN: I object to that as not an accurate summary of the testimony.

TRIAL EXAMINER: I was wondering if that is all you have that you told Mr. Rodgers.

MR. ROBERT MARTIN: I put the witness on the stand to examine him and when I get into a point, Your Honor limits the witness. I object to what is happening in this record. Just a minute ago the witness started to answer a question. Your Honor said it was important; of course, the witness draws the blank.

TRIAL EXAMINER: The witness can answer the question any time he thinks of it.

THE WITNESS: The other point I wanted to make, the questions that were asked and the things that were told, Mr. Smith related they were changing a filter in a medial pressure. This was a filter added after Mr. Rodgers was there. I took him out and I showed it to him and said, "Well, here is what we do." I am sure he was there previous

257 to that. You cannot transmit all of the information to that man and I don't care how, he has to learn himself and he has to ask questions and that — how come you pull a vacuum over here? Well, that is because we don't want to get contaminants over here; that was the type of question that was not forthcoming.

Q. (By Mr. Robert Martin) When you talk about asking questions and investigating these procedures, and you say there was an absence of it on the part of Rodgers in his retraining, are you comparing that with what other people who were trying to learn to run that plant and board do? A. Yes.

Q. They do ask questions? A. Yes.

Q. What you are saying, then, the senior operators were reporting to you he wasn't asking any of these questions? A. Yes.

TRIAL EXAMINER: Did you believe he should be asking these questions or had he progressed beyond that stage?

THE WITNESS: I believe he should. Questions is perhaps the wrong word for it. It is not a matter of asking questions; it is a matter of expressing thought about the new areas that were there, expressing, well, why, how come we increased the nitrogen, why were we circulating this; you can tell him why and I am sure any individual, you are not going to tell him and, bingo, he's got it and that is it.

258 TRIAL EXAMINER: Mr. Martin.

Q. (By Mr. Robert Martin) Do you recall the incidents that occurred in the plant on October 19 which led to the suspension of Mr. Rodgers? A. Yes.

Q. September the 19th. A. Yes.

Q. First of all, what time of the day was it when Mr. Rodgers first approached you on the subject which ultimately caused the difficulty? A. Around 3 o'clock, I believe, 2:50 p.m. in the afternoon.

Q. In what condition was the plant at that time and the operation of the plant? A. I am not sure of the exact time. Shortly before we had lost one of our major engines and briefly through there we had both of our main line engines down. The plant was totally off stream. I am not sure whether we lost the booster compressor coming in the plant but I do know we had it shut down. I am not sure we shut it down.

Q. What situation are you in with respect to time and attention and duties with the plant in that condition? A. In that condition, you are trying to cover all areas and get everything back on stream.

Q. What about the senior operators, were they busy?

259 A. Yes, very much so.

Q. Would it be apparent from the control room, that is, anybody looking at those dials and knew anything about it at all and available to talk to senior operators, that was in that control that would know that the plant was down and some of its components down? A. Yes, very definitely.

Q. Were lights going on on the board? A. Yes, and people running. There wouldn't be any questions of whether — anybody could walk out and see there was trouble.

Q. Those were the conditions at the time Mr. Rodgers approached you? A. Yes; as a matter of fact, I had received a telephone call. I was in the control room and Leon Meyers, a clerk, buzzed me on the intercom, on the telephone, and told him I couldn't take the call. It was a few minutes later I went; I think they had decided the engine wasn't going to come up or they had gotten it back up. I went up to the front office with Leon to see who the call was from.

Q. What happened? A. At this point Mr. Rodgers approached me.

Q. Go ahead and tell me what happened. I want you to tell what he said and how he acted and what he did and what his manner was and relate it as completely accurately as you can. A. Well, he first approached me and asked if he could see me; I said yes, for a minute.

260 We went into my office. Mr. Joe Dosage was there. He was the instrument man and he was leaving.

Q. Did he leave? A. Yes. We sat down and Mr. Rodgers had this paper with him and he said, "I want this to be posted." I said, "What is this"? And he said, I believe he said Judge Goldberg's decision. I said, "As far as I know there hasn't been any final decision made and my understanding is he has made a recommendation to the Board and that came out in Wichita and I think everybody knows what was said down there about Goldberg's decision. As far as I know we have always posted any official document we are supposed to post and we posted it."

He said, well, he opened it up to the last page in this sheaf of papers, saying, "Well, right here it says it should be posted," et cetera.

MR. WACKNOV: He said "et cetera"?

MR. ROBERT MARTIN: Just a minute. I think we ought to proceed in an orderly fashion.

A. (Continuing) He said, "Right here," pointing at this, "that is where it says it should be posted." I said, "Well, again, as far as we know, as far as I know there is no official document." He says, "It says right here I should call Kansas City if it is not posted." I said, "You do whatever you feel you have to do." He said, "Does that mean I call"? I said, "No, you do whatever you feel that you have to do." And he again had

261 this piece of paper and he was getting a little, progressively a little angrier and when Mr. Rodgers gets mad, he gets mad in the face and he gets up a little close and stands on your toes. He says, "Right here it says I should call Kansas City." I said, "You do whatever you feel you have to, but we have always posted anything that was legal and required by law and we always will," and I left and went back to the control room and the more I thought about it, I had originally, I was still under the same orders from Mr. Angle and Mr. Marvin Martin when Mr. Rodgers first came back to work I couldn't reprimand him. There was a list of 18 things I should not do. If this were to occur I should put it on paper and go though counsel and et cetera. I was walking back to the office to call Wichita and I expressed my feelings on the matter but as I came back down the hall Mr. Rodgers was at Harry Harms' office at the telephone with this sheet of paper. I said, "If you are going to make that call," referring to the one he mentioned earlier, I said, "you do it on your own time." He said, "Well, you said I should call." I said, "No, you do whatever you feel you have to do." He said, "Well, is that final"? I said, "Yes, I don't feel I should have to pay for a phone on my time to Kansas City. You want to make a phone call you do it on your own time at home." He said, "Is that final"? I said, "Yes, as far as I am concerned it is; I am going to call Wichita." And he said,

262 "Well, is that final"? I said, "Yes, that is final," and he turned around and walked off.

Q. (By Mr. Robert Martin) What was his manner when he said, "Is that final"? A. Very aggressive.

Q. Was he standing up close to you or red? A. He was angry but he wasn't up close to me. He was in the office and I was in the doorway.

Q. How many times did he say, "Is that final? Is that final"? A. About three or four.

Q. Then, following that did you report the incident to Mr. Angle by telephone? A. Yes, immediately thereafter.

Q. Now, Mr. Tyler you are the plant manager; that is, you are the chief supervisory officer at the plant? A. Yes.

Q. At any time, for example, Mr. Angle isn't there? A. Yes, I would say any time whether Mr. Angle is there. If he is there I still direct the people.

Q. Mr. Angle doesn't take any hand in the physical operation of the plant? A. No.

Q. Do you have an assistant? A. Yes.

263 Q. What is his name? A. I have two; Mr. Harry Harms, who is operations manager,and Mr. W. L. Roberts, who is maintenance manager.

Q. Who gives orders to the employees in the plant? Who directs what person or persons actually direct the physical operation of the plant in the normal course of its operation? A. The senior operator. I would say we have got a little trailer and bring up the feed or something like this, as far as the physical operation of carrying out the order the senior operator carries them out.

Q. Who gives direction to the junior operators and other people in the plant to accomplish what move is to be made? A. The senior operator. There are times I may be out there; I do it very seldom but I, at times, give junior operators orders directly.

Q. There might be times Mr. Harms is out there? A. Yes.

Q. In normal operation it is the senior operator? A. Yes.

Q. Who makes the decision as to the data that comes in on the control board as to what changes or alterations should be established to maintain the stream? A. The senior operator normally; as we get in the trouble period we are all trying to come up with the answer.

Q. Unless you have some peculiar problem that calls on your
264 knowledge or Mr. Harms' knowledge of cryogenics or engineering, the senior operator on a day-to-day basis makes the decision?
A. Yes; I can't be out there at 2 o'clock in the morning.

MR. WACKNOV: May I make this comment for my own knowledge and purposes of the record? There has been a prior case with regard to the status of the senior operators and the decision thus far is that they are not supervisors within the meaning of the Act. Now, I want to know whether Respondent is contending in this proceeding that senior operators are supervisors. If so, I want to make my objection that it is not properly presented in this proceeding since it has been the subject of the prior proceeding before Trial Examiner Goldberg.

* * * * *

265 MR. WACKNOV: At this time I would like to move that all the testimony with regard to supervisory capacity of senior operators be stricken from the record because that is not an issue in this proceeding and because it is an issue in the past pending unfair labor practice proceeding.

TRIAL EXAMINER: If he were a supervisor in this proceeding, would the law be different? Would the result necessarily be different?

MR. WACKNOV: No, sir, it wouldn't because we allege a violation under Section 8(a)(1) and (4); even if he is a supervisor there is a violation. Any decision in this proceeding that he is a supervisor would be in conflict with any other proceeding.

TRIAL EXAMINER: If it is an issue in this case, it surely is before me.

MR. WACKNOV: If that issue needs to be resolved, because it does not necessarily be resolved —

TRIAL EXAMINER (interrupting): I could get stipulations from the parties about the evidence if the evidence is the same on this issue.

266 MR. WACKNOV: Let me make two points. Number one, it has been — number one, if Mr. Rodgers is a supervisor or not, still it is our contention in this proceeding his violation is a violation of Sections 8(a)(1), 8(a)(4) or 8(a)(3) or all three or some. The Trial Examiner here does not have to find that Mr. Rodgers is or is not a supervisor. The —

TRIAL EXAMINER (interrupting): For an 8(a)(3) finding he would.

MR. WACKNOV: For 8(a)(1) or (4), if the Trial Examiner can say if he is a supervisor, I find his discharge was in violation of 8(a)(1) and (4). You don't really need to litigate the actual status of Mr. Rodgers.

TRIAL EXAMINER: For an 8(a)(3) finding I would.

MR. WACKNOV: Well, my thinking is that either way —

TRIAL EXAMINER (interrupting): You can't find an 8(a)(3) with a supervisor; you can only find an 8(1) or 8(4).

MR. WACKNOV: Either one makes no difference to the outcome of the case.

TRIAL EXAMINER: Do you want to withdraw the 8(a)(3) allegation in the complaint?

MR. WACKNOV: No.

TRIAL EXAMINER: Then, I have to let this gentleman present his evidence unless the parties can stipulate that the evidence before Goldberg is the same as it would be before me and I can go read it.

267 MR. WACKNOV: If you find it is necessary to have that evidence before you, then, the evidence or the only finding we would need would be the Board decision which will be issued shortly, which will determine

the status of Mr. Rodgers, the Board decision on Trial Examiner Roger's initial decision, and you as a Trial Examiner would be bound by that decision.

MR. ROBERT MARTIN: Not necessarily.

TRIAL EXAMINER: Only if the duties are the same. I don't know what the testimony is going to be in this case; I don't know what is was in the other case, but you — I will permit Respondent to present testimony on the supervisory issue unless the parties can agree that the testimony in the record is satisfactory to both parties; if it is, I will go read the record. I don't follow the Trial Examiner's decision. I could read the record and change the decision as far as that is concerned. I wouldn't have to come out with the same decision as my colleague Goldberg did.

MR. WACKNOV: No, sir.

* * * * *

268 Q. (By Mr. Robert Martin) Mr. Tyler, I think we were discussing before the recess the operation of the plant. What hours of the 24-hour day is it normal that you and Mr. Harms are present in the plant and in your office? A. From 8 to 4, five days a week, Monday through Friday.

Q. And what about the hours other than 8 to 4 daylights? Are you and Mr. Harms, either of them, are you normally in your office? A. No, we are at home.

Q. Who are the ranking persons in terms of position or employment in the plant the other 16 hours of the day? A. The senior operator.

Q. If either during the daylight hours when you and Mr. Harms are there or at nighttime when you are not there, if changes need to be made in the dial settings or something out in the plant or alterations in the running conditions or pressures of readings of any equipment, who would issue directions or instructions to other employees to carry that out? A. The senior operator.

Q. And in the event of emergency changes in procedure in order to avoid the development of some complication, who makes the first,

269 exercises the judgment and gives the orders to the personnel?
A. The senior operators.

* * * * *

Q. (By Mr. Robert Martin) And at that time and presently there are how many so-called junior operators assigned to each senior operator? A. There are three.

Q. Now, is there a different pay, pay differential between junior and senior operator? A. Yes.

Q. And between senior operators and other employees in the plant? A. Yes. The senior operator earns four dollars an hour; the junior operator earns three dollars and twenty cents an hour.

270 Q. What was Mr. Rodgers' classification so far as pay is concerned during the period in 1967 when he was working? A. Senior operator and he earned four dollars an hour.

Q. He was entitled senior operator even though he was being given training? A. Yes.

Q. Now, in the event it develops there is maintenance work to be done or something to call out the maintenance employees during daylight hours or nighttime hours, does the senior operator have authority to do that; that is, to go directly and to request something to be done? A. Yes. They have called out and do call out maintenance men in the middle of the night when they are not at the plant, when the maintenance people are not at the plant.

Q. Or issue instructions to them to do something in the daytime when they are there? A. Depending upon the type of action, if there is something that is not critical, no emergency, the senior operator issues what we call a work request. This goes then to maintenance.

Q. This they do more or less as they can schedule it? A. Yes.

Q. In emergency situations he also directs that, does he not? A. He would probably go — during the daylight he would probably go to the maintenance operator or maintenance manager, W. L. Roberts, and say, we have a problem here and we need somebody to work on it
271 and he would assign people.

TRIAL EXAMINER: The work request, does it go in automatically to the maintenance department or just taken care of or would the senior operator have to ask you for — would you have to initial anything, for example?

THE WITNESS: It varies again on the type. We might get a work request that says let's add a new liquid helium tank; it is desirable; it is a suggestion.

Q. (By Mr. Robert Martin) In the normal work request, describe how that is handled. A. They fill out the work request and it goes through — if Mr. Harms is there it may go through him or it may go direct to maintenance.

TRIAL EXAMINER: It doesn't go direct to a maintenance department and be picked up automatically and go to work?

THE WITNESS: It can go that way, yes, depending on what they are requesting.

Q. (By Mr. Robert Martin) Is there any fixed policy? A. It may go to maintenance and the maintenance manager may kick it back to me, and say, is he right? Do we want to do this?

Q. Now, are many jobs connected with the actual operations of the plant, emergency or unusual maintenance items and particularly at a time when this senior operator is the ranking person in the plant, can he go direct to maintenance employees or even third-party services
272 in order to get what is necessary to operate and maintain the plant? A. Yes.

Q. Do they do that? A. Yes, they have.

Q. Now, when Mr. Rodgers returned to work in July of 1967 and during the entire time he was there, what instructions did you have

from Mr. Angle with respect to how Mr. Rodgers should be treated, how he should be handled? Tell us what instructions or directions you got from Mr. Angle.

MR. WACKNOV: I object; this is not a prosecution of the company for mistreatment of Arel Rodgers. It is immaterial and irrelevant.

TRIAL EXAMINER: Within the context, I will permit the question.

A. Well, the first instruction after determining he was coming back was that primarily only that I should treat him, Mr. Angle, treat him as an older, valued employee that had been ill and away and do everything I could to get him reoriented as soon as possible. The other set of instructions are this list of instructions.

Q. (By Mr. Robert Martin) Specifics from Mr. Martin? A. I first received these over the phone; it was a conference call with Mr. Angle and Mr. Marvin Martin. I first received these verbally from Mr. Angle; Mr. Marvin Martin was on the phone, also and, then, I

273 received the written summary of that list.

Q. These were technical instructions? A. They were instructions in dealing with Mr. Rodgers.

Q. Tell us what they told you. A. To make sure there was no harassment, not to reprimand him or, if I did, to go through There were a number of things of that nature; I believe there were some eighteen or twenty on the list.

Q. Did you ever receive from Mr. Angle or anybody else in authority any instructions or did you ever give any instructions to anybody in that plant to discriminate against Mr. Rodgers or impair his retraining or his learning or to do anything other than treat him just in the manner Mr. Angle first described to you? A. No, I did not.

Q. Did you ever make any attempt to do that? A. No.

Q. Did anybody else out there to your knowledge? A. No.

* * * * *

CROSS EXAMINATION

* * * * *

282 Q. (By Mr. Wacknov) And did you ever at any time tell Mr. Rodgers you were busy; you couldn't talk to him, you didn't have the time? A. As I outlined to him when he first came to work, that we were installing that engine, I told him at that time my time was going to be limited; we were going to install it. We had the Airco people.

283 I don't recall it but I possibly did say it.

Q. At that time you told him you might not have a lot of time to spend with him? A. At what time?

Q. At the time you just talked about when he first came back to work. A. Yes, I said for the first few days, with Harry on vacation, with this engine coming in, I wouldn't have an opportunity to spend much time with him.

Q. You didn't say anything to him on the 19th?

MR. ROBERT MARTIN: Anything about what?

Q. (By Mr. Wacknov) With regard to not having the time to talk to him. A. I said, yes, just a minute. I could talk with him for a minute.

Q. You and he sat down on chairs in your office? A. Yes.

Q. You invited him to sit there? A. Yes. We didn't end up sitting down but we started out sitting down.

Q. After all this conversation you related with Mr. Rodgers, did you call Mr. Angle about this? A. Yes.

Q. How long had you talked to him? A. I am not sure. I think the first time I talked to him was very reasonably short and I called

284 back again in just a few minutes.

Q. You mean you talked to him twice? A. Yes.

Q. On the same matter? A. Yes.

Q. How long was the first conversation? A. I don't recall.

Q. What did you explain to Mr. Angle? A. I related what had happened; I told him Rodgers was fired.

Q. How long did this conversation last? A. There was two conversations. I don't know; it was fairly late in the day. I don't know. The first one went too long, ten or fifteen minutes. The second one was longer and as a matter of fact, I called him again that evening at home.

* * * * *

287 Q. (By Mr. Wacknov) Mr. Tyler, on this day of the 19th, was Mr. Rodgers supposed to be operating the board or just observing, as you told him your duties were? A. I am not sure. He should have been available to help.

Q. Mr. Tyler, was he in charge of operating the board on that day? A. I doubt it, no.

Q. He was carrying out the duties you assigned to him that day as far as observing and asking questions and various duties you gave him?

288 A. Yes; those general duties I have given him. I suspect that day he did a few things that some of the — either the senior or Mr. Harms asked him when we were in trouble.

Q. He did those things that were asked of him, is that true? A. Well, like I say, I suspect. I don't know.

Q. Do you know of any time he didn't do anything that was asked of him? A. No. The senior operator has never said anything. No one has reported to me he was told to do something he didn't do.

* * * * *

294 MR. WACKNOV: Is this in a conversation between you and Mr. Mestal?

MR. ROBERT MARTIN: I am relating what we would expect this witness to testify of what occurred in July and August of 1967.

TRIAL EXAMINER: This is based upon what?

MR. ROBERT MARTIN: It was based on reports Mr. Mestal got from Mr. Rodgers.

TRIAL EXAMINER: What Mr. Mestal told you? How would you know this?

MR. ROBERT MARTIN: Because Mr. Mestal told me this and

295 I was present in court proceedings in which he said this, in substance. The principal one I read you. We further expect this witness to testify that there was an issue in the contempt proceeding that the contempt proceedings had been instigated in an attempt, the Respondent contended, in an attempt to bring about a financial settlement between Mr. Rodgers and Mr. Angle of past wages and that the attorneys had cooperated with him and, specifically, Mr. Wacknov. Mr. Wacknov had knowledge that the claims of Mr. Rodgers with respect to his treatment in the plant and the bona fideness of his retraining program were not true. That immediately following the acquittal of Mr. Angle on contempt, there occurred in my office a conversation between myself and Mr. Mestal, Mr. Wacknov not being present, in which I told Mr. — in which Mr. Mestal said to me, in substance, that he was concerned about the belief on our part that Mr. Wacknov, much less he, had knowledge of the falsity or inaccuracy, or both, of statements made by Rodgers to Wacknov and Mestal and that he wanted to assure me this was not the truth, that Mr. Wacknov, as well as himself, had been completely misled by Mr. Rodgers as to the retraining program and how he was being treated at the Kansas Refined Helium plant and they were surprised by some of the testimony which Rodgers and others gave at the contempt hearing, and assured me that the attorneys for the government had been in good faith and had not had knowledge of the fact that the allegations made to them in the investigatory statements were not

296 true. There were other matters discussed between Mr. Mestal and myself and I do not recall any that pertained to this particular issue.

TRIAL EXAMINER: Very well.

MR. ROBERT MARTIN: So far as the proof of the testimony from Mr. Wacknov is concerned, I will have to say I don't know what

he would say. Mr. Wacknov had never told me. I have nothing but statements in the record, one of which I read to you, and what Mr. Mestal told me.

TRIAL EXAMINER: Your questions of Mr. Wacknov would be along the same lines, but you don't know what the answer would be.

MR. ROBERT MARTIN: Yes, because I have never had the opportunity to ask him the questions. I would like, also, to have it stipulated in the record that Mr. Mestal and Mr. Wacknov accepted an apapointment, that they accept an appointment in writing from the United States District Court for the District of Kansas to serve as special prosecutors in both the civil and criminal contempt actions and that they not only – they were not appointed in writing by order entered in United States District Court, but did enter upon those duties. They were engaged as special prosecutors in connection with the civil and contempt actions against Mr. Angle at all times between approximately July 20, 1967, and the conclusion of the contempt hearing on, I believe, September the 14th or 15th, 1967. Will you agree that you did so serve?

297 MR. WACKNOV: At this time, Mr. Trial Examiner, what he says is true; however, I will not stipulate to it because I was not in charge of that case –

TRIAL EXAMINER (interrupting): You did get a temporary appointment as a special officer by the judge?

MR. WACKNOV: Being unfamiliar with the procedure, I assume that is the legal title of it. I don't know. I have never done it before. I am not sure what my position was. We were appointed by the judge to try the contempt case.

TRIAL EXAMINER: To prosecute the case?

MR. WACKNOV: Yes.

TRIAL EXAMINER: Whatever that meant.

That is acceptable to you?

MR. ROBERT MARTIN: I believe so, except he is being more vague about it than he ought to be. There is an order prepared, I think, by Mr. Wacknov and Mr. Mestal and I think they dictated it and the court signed it. It wasn't something done off the cuff.

TRIAL EXAMINER: Mr. Mestal will probably have it.

MR. ROBERT MARTIN: Mr. Wacknov has it in his file.

MR. WACKNOV: No, sir, I do not have my files with me. I assume it will be, but the file probably is in Washington.

TRIAL EXAMINER: The Court appointed them special officers to prosecute the trial —

298 MR. ROBERT MARTIN (interrupting): You didn't resign or turn in your appointment.

MR. WACKNOV: No. However, there was some discussion about the matter during the hearing and to avoid any problems, I was not actually affirmatively involved in certain aspects of it because of various things that went on between the court —

MR. ROBERT MARTIN (interrupting): You were present at the trial and all the hearings.

MR. WACKNOV: Yes.

* * * * *

Whereupon,

AREL RODGERS

was recalled as a witness by and on behalf of the General Counsel and, having been previously sworn, was examined and testified as follows:

* * * * *

299 DIRECT EXAMINATION

301 Q. (By Mr. Wacknov) * * * On July 19th you began coloring flow charts per Mr. Tyler's instructions? A. Yes.

Q. Approximately how many days did you color flow charts? A. Probably three days.

Q. After that what job were you given? A. I had operational questions that I was to answer.

Q. Were you to answer them in writing? A. Yes, in essay form.

Q. Who gave you these questions? A. Mr. Tyler.

Q. What office did you use to color the flow charts? A. Harry Harms'.

Q. Were you told to use that office?

302 A. Yes.

Q. What office were you told to use to write out the questions? A. Mr. Harry Harms'.

Q. Did you turn these questions in, back to Mr. Tyler? A. Some of them Mr. Harry Harms went over, but most of them I think I took to Mr. Tyler.

Q. Approximately how long did you have to write out these answers? Approximately how long a period of time? A. I do not recall exactly how long, but it was probably two weeks or maybe even longer.

TRIAL EXAMINER: Is that a continuing written questions? Is that what he is testifying to, or one set of questions took you two weeks to answer?

THE WITNESS: This was a set of questions that was given to me and I did go and examine a piece of equipment outside of that office and, then, I would come back in and write out an answer to try to explain, give an answer to a question.

Q. (By Mr. Wacknov) In order to answer your questions, you would, from time to time, go in the plant and look at what you were writing about? A. Yes.

Q. This took approximately how long during this period of writing out answers? A. Two or three weeks.

Q. This was in Mr. Harms' office?

303 A. Yes.

Q. You were instructed to do this in Mr. Harms' office? A. Yes.

Q. You were not anywhere near the control panel at the time as far as working on the control panel? A. I was not assigned to observe and ask questions. My jobs were to answer written questions and my place was in Mr. Harms' office.

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CROSS EXAMINATION

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304 Q. (By Mr. Robert Martin) * * * Did you have any materials that you were supposed to have reviewed and colored that you hadn't finished? A. I certainly did not.

Q. You did not? A. No, sir.

Q. How long did it take you to finish that work? A. The coloring, I believe I completed that and not only just coloring but, also, adding the pressures and temperatures at these designated points along with the coloring I completed in the three days.

Q. How much longer did it take you to write out your questions? A. With the examination of the equipment and the checking I did in order to answer the questions, it was several weeks.

* * * * *

GENERAL COUNSEL'S EXHIBIT NO. 1-E

COMPLAINT AND NOTICE OF HEARING

It having been charged by the Oil, Chemical and Atomic Workers International Union, AFL-CIO (herein called the Union) that George A. Angle, d/b/a Kansas Refined Helium Company (herein called the Respondent) has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq. (herein called the Act), the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the Regional Director for the Seventeenth Region, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended:

1.

The charge herein was filed by the Union on October 18, 1967, and served by registered mail upon the Respondent the same date. A first amended charge was filed by the Union on October 30, 1967, and served by registered mail upon the Respondent on October 31, 1967.

2.

(a) The Respondent is engaged as a sole proprietor in the business of refining and selling helium gas from a facility (herein called the plant) located immediately outside the corporate limits of Otis, Kansas.

(b) The Respondent annually sells in excess of $500,000 worth of helium gas, and annually sells in excess of $50,000 worth of helium gas directly to customers located outside the State of Kansas.

(c) The Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act.

3.

The Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

4.

On or about September 19, 1967, the Respondent did suspend and on or about October 2, 1967, the Respondent did discharge its employee Arel Rodgers, and at all times since, it has failed and refused to reinstate said Rodgers to his former or substantially equivalent position.

5.

The Respondent engaged in, and continues to engage in, the acts and conduct set forth in paragraph 4:

(a) Because of said Arel Rodgers' membership and activity on behalf of the Union.

(b) Because said Arel Rodgers acted as a witness and gave testimony under the Act.

6.

By the acts, and by each of them, described above in paragraph 4, the Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in, and is thereby engaging in, unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), 2(6) and 2(7) of the Act.

7.

By the acts, and by each of them, described above in paragraph 4, for the reasons stated in paragraph 5(a), the Respondent has recriminated, and is discriminating, in regard to hire or tenure of employment or any term or condition of employment to encourage or

discourage membership in any labor organization and has thereby engaged in, and is thereby engaging in, unfair labor practices affecting commerce within the meaning of Sections 8(a)(3), 2(6) and 2(7) of the Act.

8.

By the acts, and by each of them, described above in paragraph 4, for reasons stated in paragraph 5(b), the Respondent has discriminated, and is discriminating, against an employee for giving testimony under the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Sections 8(a)(4), 2(6) and 2(7) of the Act.

PLEASE TAKE NOTICE that on January 23, 1968, at 10:00 a.m. (CST), at

Conference Room
Federal Office Building
Broadway & Main Streets, Great Bend, Kansas

a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person or otherwise, and give testimony. Form NLRB 4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases as Taken From the Board's Published Rules and Regulations and Statements of Procedure, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.20 and 102.21 of the Board's said Rules and Regulations, the Respondent shall file with the said Regional Director, an original and four (4) copies of an answer to said complaint within ten (10) days from the service thereof, and that, unless the Respondent does so, all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated: December 4, 1967 /s/ Robert E. Allen
Regional Director
National Labor Relations Board
Seventeenth Region
610 Federal Building
601 East 12th Street
(SEAL) Kansas City, Missouri 64106

Form NLRB 4668
(9-67)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE CASES AS TAKEN FROM THE BOARD'S PUBLISHED RULES AND REGULATIONS AND STATEMENTS OF PROCEDURE

The hearing will be conducted by a Trial Examiner of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D. C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Trial Examiner, upon the joint request of the parties, will conduct a "pre-hearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record — for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Trial Examiner conducting the pre-hearing conference will be the one who will conduct the hearing; and

it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Trial Examiner for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Trial Examiner specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the

close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Trial Examiner, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Trial Examiner may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Trial Examiner who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Trial Examiner will be considered unless received by the Chief Trial Examiner in Washington, D. C. (or, in cases under the San Francisco, California branch office of Trial Examiners, the Associate Chief Trial Examiner in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Trial Examiner or Associate Chief Trial Examiner, as the case may be. All briefs or proposed findings filed with the Trial Examiner must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Trial Examiner will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Trial Examiner's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Trial Examiner's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Trial Examiner will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

GENERAL COUNSEL'S EXHIBIT NO. 2

KANSAS REFINED HELIUM COMPANY
1720 Wichita Plaza, Wichita 2, Kansas
July 17, 1967

Mr. Thomas B. Barrett
Mr. Arel L. Rodgers

Dear Sirs:

On Monday, July 10, we received Mr. Garrett's acceptance of the offer of temporary reinstatement under Judge Brown's order. Out of town commitments have interfered with my reply until my return to the office this morning.

We will reinstate both of you under the terms of Judge Brown's ORDER GRANTING TEMPORARY INJUNCTION, immediately upon presenting yourselves to the Kansas Refined Helium Company office at Otis, Kansas, on any week day between 8:00 A.M. and 5:00 P.M. during the next 90 days from the date of this letter.

Will you please let me know the date you intend to return to work, when you have this information.

KANSAS REFINED HELIUM COMPANY

/s/ George A. Angle

GAA:mvs

GENERAL COUNSEL'S EXHIBIT NO. 4

KANSAS REFINED HELIUM COMPANY
1720 Wichita Plaza, Wichita 2, Kansas
September 19, 1967

Mr. Arel L. Rodgers
Otis, Kansas

Dear Mr. Rodgers:

Henry Tyler has reported to me the events of today in which, as I understand it, you insisted that certain written material be posted immediately on the plant bulletin board by Mr. Tyler; insisted that he read this document that you had in your possession; and attempted to make a private long-distance telephone call from the plant and when Mr. Tyler refused to allow you to do so on company telephone and company time, you questioned him repeatedly as to whether this was his final decision.

This conduct by you occurred on a day when the plant was off-line and certain emergency conditions occurred and recurred. Mr. Tyler was extremely busy, as was everyone else in the plant, but you saw fit to select this time to create a disturbance concerning matters for which you have no responsibility and which are entirely foreign to your duties in the plant.

I want you to understand that Mr. Tyler is in charge of this plant and you are not in charge of it, and you will not be allowed to dictate to Mr. Tyler what is to go on the bulletin board or anything else with respect to the operation and maintenance of this plant and its personnel.

I also wish to inform you that I agree completely with Mr. Tyler's decisions in this matter. You will not be permitted to make or transmit reports to the NLRB or anybody else outside the plant, on company time or with the use of company facilities. Whatever complaints you may have as to the management of this company or the plant operations, you are completely free to report to anyone you chose so long as you do it on your own time.

As the result of today's activities, you are suspended until further notice from me, in writing. Your suspension is effective immediately and is without pay. You are not to come on the company premises during the period of your suspension. Your check for wages due you through today will be sent to your home.

Very truly yours,

KANSAS REFINED HELIUM COMPANY

/s/ George A. Angle

GAA:mvs

cc: Mr. Henry Tyler

GENERAL COUNSEL'S EXHIBIT NO. 5

KANSAS REFINED HELIUM COMPANY
1720 Wichita Plaza, Wichita 2, Kansas
October 2, 1967

Mr. Arel L. Rodgers
Otis, Kansas

Dear Mr. Rodgers:

During the time that you have been on suspension from the Kansas Refined Helium plant, I have obtained detailed reports from the plant personnel respecting the incident which brought on the

suspension and, in addition, I have reviewed carefully, your performance in the plant and your activities and attitude over the entire sixty-day period of your employment from July 19 to September 19.

The information now at hand is sufficient to convince me that the events in which you were involved on September 19, were not just an isolated instance of misconduct but, instead, were part of a recurring pattern of behavior from which it is perfectly clear that you are in the plant for the purpose of causing trouble for me and for the employees, rather than to perform the work and services for which you are paid. The principal events and circumstances to which I refer are these:

In addition to interfering with Mr. Tyler's management of the plant in the manner described in my letter of suspension, I have since learned that on the preceding Saturday, you came to the plant during your off-duty hours and talked to some of the employees who were on duty, about the N.L.R.B. Examiner's Report, and expressed opinions to them that KRH was required to post copies of the Report and made various observations about the affect of this Report on the plant and its personnel.

At the time you were reinstated, and for several days thereafter, it appears to me that you must have given untruthful accounts of the value and nature of the reorientation program which Mr. Tyler and I had worked out for you. I base this chiefly upon the fact that the statements of the National Labor Relations Board lawyers and their claims to the Court, are utterly inconsistent with your later testimony under oath on depositions and at the trial. Furthermore, your testimony in the depositions and at the trial of the contempt action was not accurate and departed from the testimony of others and from information furnished to me by other people at the plant. In other words, it seems clear to me from what took place in the contempt hearing, that you deliberately set out to give false reports and help build a case of contempt against me which was not justified by the facts.

During the time that you have been employed, you have kept notes concerning the activities of Mr. Tyler and other supervisors in the plant, taken down information concerning my telephone calls and requests for information at the plant, and you have turned this information, which really was none of your business, over to government authorities, presumably, in the hope that it would be useful in the attempted prosecution for civil and criminal contempt. I want to make it clear that I think you have the right to talk to government authorities or N.L.R.B. lawyers or anyone else, and you have the right to convey complaints to them, so long as they are truthful, which, I am of the opinion, they have not always been. But truthful or not, you do not have the right to spend time at the plant while I am paying you, gathering and writing down information which is really none of your concern, for any purpose, or to pass along to anyone, and that is what you have been doing.

The fact that you intend to continue utilizing company time to gather information which you think might be used to my disadvantage, is amply supported by your own testimony in the depositions taken in the contempt action. You made it clear in your testimony that you would continue to use company time to gather and write down information as long as you felt it was to your advantage personally.

I believe that one of the most serious departures from proper conduct, is revealed by one of the notations in your notebook which I first learned about during the contempt trial and which I believe was to the effect that when Mr. Tyler asked you questions during your retraining program in order to find out what you had learned and what you had not learned in the program, you were very noncommittal in your answers. I am again convinced that this was a deliberate effort on your part to impair the effectiveness of a retraining program which Mr. Tyler was administering in good faith, at my instructions, and for your education so that you could assume normal duty in the plant. In this connection, I have also been furnished information from other employees to the effect that you did not seriously attempt to retrain yourself, but rather, stood around without asking questions or giving any indication of what you needed to learn in order to be properly trained to do your job.

You have presented me with very serious problems from the standpoint of your relationship with other employees in the plant, and these arise from two sources:

First, in the latest N.L.R.B. hearing, although subpoenaed as a witness by the government, you were not called upon to testify but, instead, sat beside the government lawyer and transmitted information to him from which to examine and cross-examine other employees in the plant. I could understand this and even overlook it, but your fellow employees resented it and I can understand their attitude as well.

Second, is the fact that according to other employees, some of the information which you gave from the witness stand in the contempt hearings and particularly your testimony that certain senior operators had neglected to carry out Mr. Tyler's instructions respecting your retraining, were false. This was a reflection upon your fellow employees which they deeply resented.

You are aware, of course, that since the decision of the Court of Appeals, I have had no obligation to continue your temporary reinstatement; however, I had made up my mind to continue your employment in the hope that you would straighten out after the contempt action was over, enter into the retraining program and become a good and qualified employee. I thought that once that case was successfully defended, perhaps you would stop your efforts to harass the management of KRH and the other employees, but it is perfectly apparent from your conduct between Friday, September 15, and Tuesday, September 19, when you were suspended, that your attitude and your conduct have not changed. It is now perfectly clear to me that you will not straighten out and will not become a satisfactory employee and that your continued presence in the plant will serve only to create difficulties between yourself and other employees, and continue to take the time and attention of Mr. Tyler and myself, and others who have the responsibility for the management and operation of that plant.

The Kansas Refined Helium plant is not a shoe factory or assembly line operation. This plant is a very technical, complex plant, the first volume liquid helium plant ever built, the largest liquid

helium plant in the world. It is a highly automated plant, but it is dependent entirely on the individual decisions made by the plant personnel. Often these decisions must be made within the matter of seconds both by the senior operator, charged with the responsibility of running the plant, and any one of the junior operators, under his supervision. Therefore, it is important that all KRH operating personnel be entirely familiar with the plant and their duties, alert and constantly 100% attentive to their duties in order to prevent a mistake that could possibly amount to thousands of dollars, and perhaps, injure or kill other employees. This responsibility falls primarily on the senior operator who is in complete charge of the plant operations and the operating personnel under him. I have several years of my life and most of my assets at stake in the successful operation of this plant. Given a choice, I cannot afford to have employees in the plant who have a desire to embarrass or harass the plant management, and who spend their time doing something else than learning their job and performing it.

Under these circumstances, I feel that I have no alternative but to discharge you, and that is the purpose and ultimate conclusion of this letter. I want to make it clear to you, again, that I have, in the past and will, in the future, comply with the orders of any court respecting the employment, continued employment, or reinstatement of any employees; but so long as I am free to determine whether or not I will employ you, I will have to base the decision upon your attitude and your performance, and its comparison with the attitude and performance of other employees. I am sorry that your reinstatement at the plant has not been successful, but it has been entirely the result of your own conduct.

Very truly yours,

/s/ George A. Angle

GAA:mvs

GENERAL COUNSEL'S EXHIBIT NO. 6

KANSAS REFINED HELIUM COMPANY
1720 Wichita Plaza, Wichita 2, Kansas
September 27, 1967

Mr. Arel L. Rodgers
Otis, Kansas

Dear Mr. Rodgers:

You will find enclosed your check which covers the pay period ended September 17, plus the two days September 18, and 19.

I am aware that you made claim for wages during all three of the days you were in Wichita attending the contempt trial; nevertheless, I believe the record shows that you were called as a witness only on the first day and that your testimony was concluded on that day, following which our attorneys announced to the court that you could be excused, but the NLRB attorneys requested that you remain present. You were not recalled as a witness and I presume that you were appearing in an advisory capacity to the NLRB attorneys. Therefore, we are paying you for only the day which you testified for the same reason that we have paid all of the other employees for their compulsory appearance to testify, but with respect to the other two days, we believe you should look to the NLRB for the time and expense.

Sincerely yours,

/s/ George A. Angle

GAA:mvs

TRIAL EXAMINER'S DECISION

GEORGE L. POWELL, Trial Examiner: This case was tried before me at Great Bend, Kansas on January 23 and 24, 1968. The complaint issued December 4, 1967, based upon a charge and an amended charge filed on October 18, 1967, and October 30, 1967, respectively. Briefs of the parties were filed on February 21, 1968. Presented is the question of whether Respondent suspended employee Arel Rodgers for cause or because of his membership and activity on behalf of the Union, and whether he was subsequently discharged because he acted as a witness and gave testimony under the Act. Sections of the National Labor Relations Act (29 U.S.C., Section 151, et seq.), herein called the Act, alleged to have been violated are 8(a)(3), (4) and (1).

On the entire record of evidence, my observation of the witnesses as they testified, and on due consideration of briefs filed by Respondent and General Counsel, I find that the General Counsel has established by a preponderance of the evidence that Respondent violated Sections 8(a)(3), (4) and (1) of the Act by suspending Arel Rodgers on September 19, 1967 and discharging him on October 2, 1967.

I. Findings of Fact and Conclusions of Law

A. The Employer and the Labor Organization

I find that the allegations of paragraph 2 of the complaint respecting the nature and volume of business carried on by Respondent, a sole proprietor in the business of refining and selling helium gas at a plant located outside the corporate limits of Otis, Kansas, is true and conclude therefrom that Respondent at all times material herein was an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act. There is no dispute as to this aspect of the case.

I also find and conclude that the Union, Oil, Chemical and Atomic Workers International Union, AFL-CIO, herein called Union or Charging

Party, at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act, another aspect of the case not controverted.

B. Background

It is essential to know the background of this case in order to understand the happenings in September and October 1967.

Arel Rodgers had been an employee of Respondent since approximately July 1965. At that time the plant was in the final stages of construction and Rodgers was involved in the initial start of production. He was a senior operator whose duty, according to him, was to run a control panel and to direct the other two junior operators and "keep them on a string." A little over a year later, on September 20, 1966, he, with five others, was discharged. This followed the advent of the Union and led to the issuance of an unfair labor practice complaint. However, before the complaint proceedings came to trial, the Board instituted Section 10(j) injunction proceedings under the Act, in an effort to get the dischargees reinstated, in the District Court for the District of Kansas which proceedings took place in January 1967. Then the complaint proceedings came to trial before Trial Examiner Sidney Goldberg. Some 4 months after the injunction proceedings were heard in January, the District Court, on April 5, 1967, issued a temporary injunction and ordered the reinstatement of the six employees should they desire to go back to work prior to any Board decision. Only two of the six elected to return to work, one was Junior Operator Thomas Garrett, and the other was Senior Operator Rodgers. Rodgers returned to work on July 19, 1967. Robert Martin, attorney for Respondent, admitted that when Rodgers returned to work "he was being trained in a supervisory capacity; actually, he was in training . . . and not fully performing the duties [of a senior operator[."

On July 20, 1967, the day following Rodgers' return to work, the Board filed a petition for civil and criminal contempt.

On August 9, 1967, Trial Examiner Sidney Goldberg re-opened his hearing to include in the complaint an allegation of violation of Section 8(a)(5) of the Act.

On August 28, 1967, the United States Court of Appeals for the Tenth Circuit modified the District Court's injunction of April 5, 1967, by reversing as to Rodgers, on the ground that the question of whether he was a supervisor should be decided by the Board.

On September 12, 1967, Trial Examiner Goldberg issued his decision finding: 1) that senior operators were not supervisors within the meaning of the Act (in a previous representation case the Regional Director had found senior operators to be supervisors); and 2) that the discharge of the six employees violated Section 8(a)(1) and (3) of the Act requiring their reinstatement.

On September 13, 14 and 15, 1967, the civil and criminal contempt proceedings (which had been filed on July 20, 1967) was heard in the Federal District Court following which the judge in a bench decision, denied the Board's petition.

On September 20, 1967, Rodgers was suspended for various reasons outlined in a letter dated September 19, 1967, of which more will follow and, on October 2, 1967, Rodgers was discharged by letter bearing the same date, of which more will be said later.

This matter relates only to the question of whether Rodgers' suspension of September 20, and his discharge of October 2, 1967, were in violation of the Act. On August 9, 1967, Rodgers has appeared under subpoena at the re-opened hearing, above, although the General Counsel presented no witnesses at the August 9 proceeding. Rodgers did appear and did testify on September 13, 14 and 15, 1967, as a witness under subpoena for the Board in the above civil and criminal contempt proceedings.

C. Rodgers' Reinstatement

According to Plant Manager Henry Tyler, when Rodgers returned to work on July 19, 1967, under the injunction order, Rodgers was to be treated as ". . . an older, valued employee that had been ill and away and [Tyler was] to do everything he could to get him reoriented as soon as possible." Tyler also received specific instructions from Angle and his lawyer, Marvin Martin, over the telephone and then received a written summary of some 18 or 20 specifics having to do with the treatment of Rodgers. Tyler testified there was to be "no harassment, not to reprimand him or if he did so to go through counsel. . . ."

Upon returning to work on Wednesday, July 19th, Rodgers was given some training manuals and flow charts and was told to study, as a refresher, the manuals and color the flow charts in the office of Harry Harms, plant engineer, who was on vacation. Tyler also had questions he would ask Rodgers to answer. After receiving these instructions, Rodgers asked permission to get a cup of coffee. Tyler replied, "No, I want you to stay here. I want to post a notice on the bulletin board because the men don't know you are back to work and I want to save any embarrassment so I will post a notice on the board first." Tyler returned to where Rodgers was working in Harms' office about an hour and a half later and gave permission to get the coffee. Also on the first day back to work Rodgers said "hello, George" (previously he customarily called Angle by his first name) as he saw Angle standing at the bulletin board cleaning his fingernails with a pocket knife. Angle looked at Rodgers but did not speak to him. Later in the day Rodgers passed Tyler's office on his way to get a cup of coffee and heard Angle tell Tyler, "I would like to get that sonofabitch [sic] outside," and as Rodgers passed the room, Tyler and Angle saw him and they "just kind of ducked a little bit."

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No notice was posted on the bulletin board informing the employees of Rodgers' returning to work. Except for getting coffee, Rodgers never left Harms' office from the day he returned to work on Wednesday, July 19, through the end of the workday, Friday, July 21. After work that day, according to Rodgers, "I asked Mr. Tyler if it would be all right if I went to the maintenance building or any place I wanted to go in the plant." "He [Tyler] said it would be fine." Thereafter, from time to time Rodgers would leave Harms' office, go into the plant, and examine a piece of equipment and then return to his office in order to write out an answer to various questions submitted by Tyler. This activity continued for a period of "2 or 3 weeks."

From time to time Tyler would ask Rodgers questions regarding the retraining program. At one of these instances, Rodgers suggested that if he were retraining a man, he would put him right where he was going to work "and get him to do the job himself." Thus, Rodgers was suggesting that he be put back on the board where he had been before his discharge. Tyler did not do this. At another time Tyler told Rodgers that he thought he might put Rodgers out with a junior operator to help speed up the retraining program. Tyler never did this, however. Although Tyler testified regarding Rodgers' reorientation that Rodgers was "noncommittal" when asked questions and that sometimes he "didn't respond" or "he got no reaction from him" he had earlier testified in a deposition that he had no complaints about Rodgers' conduct on the job as to the way he conducted himself and that he did not argue with anybody.

For his retraining, Tyler wanted Rodgers to watch the senior operators and ask questions when necessary. When this began is not clear but it did not begin during the first 3 days of Rodgers' reemployment. Tyler told the senior operators, in Rodgers' presence, to train him "in the normal manner and to make their move to explain why they made it." But they did not at all times explain their moves and tell him why they made them. Whether this failure was because Rodgers already knew the

moves and why they were made (because he was a former senior operator and, indeed, had trained Merle Smith, who had taken his place as senior operator in September 1966 and who testified to some embarrassment in "training" Rodgers) or whatever the reason, the record does not show it and the burden to explain the failure was on Respondent.

Rodgers performed duties in addition to those which were told him to do, above. For example, he rearranged some operational manuals, made new cards for the conversions for the control panel, familiarized himself with the three new instruments which had been installed on the panel and started taking readings on them every 2 hours. Prior to his September 1966 first discharge he had run the control panel alone, without any higher authority. He asked questions during his retraining but only when he felt a need to do so to understand why the senior operators were doing a particular thing.

Analysis of the Retraining Program

Tyler's point about Rodgers being noncommittal has little weight with respect to any question of whether Rodgers was cooperative in his retraining. Apparently, Tyler wanted Rodgers to comment when he asked him if it would do him any good to be sent out with a junior operator. Consider this in the light of knowledge that Rodgers had previously been a senior operator over two junior operators. Only Tyler knew of the new changes in the plant since Rodgers had been a senior operator and only Tyler would know the answer to his question. If Rodgers answered in the affirmative, it would be evidence that Rodgers himself felt the need of retraining even as a junior operator. If his answer was in the negative, it would be evidence of lack of cooperation with Respondent in its new expanded plant operation. Being noncommittal, Respondent maintains that Rodgers' conduct falls within the area of being noncooperative. This position is not sustainable.

An abundance of time was taken at the trial by Respondent in an effort to establish the point that Rodgers, after being reinstated on July 19, had lied to the Board in order to get the Board to prosecute Respondent for civil and criminal contempt. At the instant trial, Rodgers testified that he was not allowed the run of the plant until he asked Tyler for permission to do so at the close of the day on Friday, July 21, his third day back at the plant. For the first 3 days of his reinstatement he was confined to the office of Harms except for coffee. Tyler told him he was going to post a notice on the bulletin board that Rodgers was back to work before Rodgers could go into the plant, but such notice was not posted. Rodgers could reasonably conclude he was not permitted into the plant.

There would be a variance with the record in this case if Rodgers had testified in the contempt proceedings that he was kept in a cubicle (Harms' office) more than the first 3 days following his reinstatement under the injunction. As Respondent has alleged that Rodgers lied in the contempt proceedings, it has the burden to prove the lie. Testimony from the contempt case, read into the record by Respondent, is to the effect that after Friday, July 21 Rodgers was not restricted to Harms' office. This is consistent with the testimony in the instant case, and Respondent has not proven Rodgers lied. Counsel for Respondent attempted to make more of the word cubicle than is possible and, indeed, the Trial Examiner himself in the heat of the trial called the attentions of the General Counsel to the fact that Rodgers said nothing at this trial about being kept in a cubicle and, hence, his testimony varied. Upon a careful examination of the record, free from the trial arena, I find it immaterial that Rodgers used the phrase cubicle in the contempt matter but not in the instant matter, as what was being referred to in both instances was the same thing, Harms' office.

Likewise, Rodgers did not lie when he told the General Counsel before the civil and criminal contempt proceedings were instigated that

he was confined in the "cubicle." That was the fact at that time as the contempt matter began on July 20 before Rodgers obtained permission to go into the plant. Rodgers also had told the General Counsel that he had not been reinstated properly under the injunction as he was not reinstated as a senior operator but, rather, he had been reinstated in a training position. Respondent's counsel admitted this latter fact so there could have been no "lie" to instigate the contempt matter.

Finally, Respondent can not successfully claim that the dismissal of the contempt matter went to the merits of the action, clearing Respondent of the allegations made therein by the General Counsel, thereby establishing that Rodgers lied in order to bring the contempt matter. The reason Respondent cannot do this is because there are many reasons, e.g., lack of proof beyond a reasonable doubt and removal of the injunction, why the District Court would dismiss from the bench in these circumstances.

D. Rodgers' Suspension and Discharge

Rodgers participated in the civil and criminal contempt proceedings by testifying on September 13, and by being present in an advisory capacity to the General Counsel on September 14 and 15, 1967.[1/] As noted above, the Federal District Court denied the Board's petition for civil and criminal contempt in a decision from the bench with no reasons being given.

On the following day, Saturday, September 16, 1967, Rodgers came to the plant and picked up his check. While there, he engaged in conversation, for up to 40 minutes, with two junior operators, a

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[1/] By letter dated September 27, 1967, Angle refused to pay Rodgers for the latter 2 days.

senior operator and a maintenance man. He talked about the recently issued (September 12) decision of Trial Examiner Goldberg. He had a copy of the decision and let some of the others read its Appendix. There was discussion among them as to whether or not Angle would sign the Appendix but Rodgers was of the opinion that it would be posted. They also talked about the contempt of court proceedings which had just been concluded. Rodgers told them, "We had taken a real drubbing there. . . ." Before he left the plant that day Rodgers saw Harry Harms, the plant manager, but had no conversation with him. There were no rules in effect that the plant was not open to employees who were not on duty. In fact, many employees visited the plant during their off-duty hours. Saturday was off duty for Rodgers.

The event which admittedly triggered the suspension of Rodgers occurred the following Tuesday, September 19, 1967. Rodgers was on a shift that worked from 8 a.m. to 4 p.m. At around 2 or 2:30 p.m. Rodgers, standing in the hallway in front of Tyler's office when Tyler came by, asked Tyler is he had a few minutes for a talk. Tyler replied that he would have the time and invited Rodgers into his office where the two sat down. Rodgers, with reference to the Sidney Goldberg decision above, asked Tyler if the "Goldberg ruling had to be posted." Tyler replied that he did not know, but if it was supposed to be posted Respondent would post it because it had posted everything in the past. Rodgers then said, "Well, I don't know whether it does have to be. Do you know for sure"? When Tyler replied that he did not know for sure, Rodgers called his attention to what was said in the Appendix of the decision that if there were questions they should call Kansas City. He then asked Tyler if it would be all right if he could make a telephone call. Tyler gave permission and Rodgers went to his car to get his copy of the Goldberg decision before making the call. On his return, he went into Harms' office to use his telephone, but before doing so, asked Tyler if it would be all right to use Harms' telephone. At that time Tyler replied "No, you can't talk." Rodgers asked

him if he meant that he couldn't call at all and was told "you can't call now." At that time, Rodgers pointed to the bottom of the Goldberg decision, wherein, it states "If employees have any questions concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 610 Federal Building, 601 East 12th Street, Kansas City, Missouri, 64106, Telephone FR 4-5181." At that point Tyler told Rodgers "I don't even know if this is the right thing . . . I am going to call Wichita." Rodgers replied, "Well, after you call Wichita, if they say it is all right, can I go ahead and call them up"? Tyler replied, "as it stands now, you can't call." Rodgers said "Okay" and went back to his job in the control room. This whole incident lasted from 3 to 5 minutes, including the time it took Rodgers to go to the car for the copy of the decision. The above facts are based on the credited testimony of Rodgers. Tyler admitted that following the conversation with Rodgers he telephoned Angle twice before the end of the day and once more in the evening about Rodgers. The first call went "ten or fifteen minutes" and the "second one was longer."

The following day, September 20, 1967, shortly after Rodgers reported for work, Tyler had him come to his office where he handed him an envelope and told him to open it and read the letter enclosed therein. After Rodgers had read the letter, which suspended him until further notice, Tyler told him to get his lunch bucket and then he accompanied Rodgers to the main gate of the plant.

The letter which Tyler handed Rodgers was dated September 19, 1967. It was introduced into evidence as General Counsel's Exhibit No. 4 and, except for the headings, it is reproduced in full as follows:

> Henry Tyler has reported to me the events of today in which, as I understand it, you insisted that certain written material be posted immediately on the plant bulletin board by Mr. Tyler; insisted that he read this document

that you had in your possession; and attempted to make a private long distance telephone call from the plant and when Mr. Tyler refused to allow you to do so on company telephone and company time, you questioned him repeatedly as to whether this was his final decision.

This conduct by you occurred on a day when the plant was off-line and certain emergency conditions occurred and recurred. Mr. Tyler was extremely busy, as was everyone else in the plant, but you saw fit to select this time to create a disturbance concerning matters for which you have no responsibility and which are entirely foreign to your duties in the plant.

I want you to understand that Mr. Tyler is in charge of this plant and you are not in charge of it, and you will not be allowed to dictate to Mr. Tyler what is to go on the bulletin board or anything else with respect to the operation and maintenance of this plant and its personnel.

I also wish to inform you that I agree completely with Mr. Tyler's decisions in this matter. You will not be permitted to make or transmit reports to the NLRB or anybody else outside the plant, on company time or with the use of company facilities. Whatever complaints you may have as to the management of this company or the plant operations, you are completely free to report to anyone you choose so long as you do it on your own time.

As the result of today's activities, you are suspended until further notice from me, in writing. Your suspension is effective immediately and is without pay. You

are not to come on the company premises during the period of your suspension. Your check for wages due you through today will be sent to your home.

Very truly yours,

KANSAS REFINED HELIUM COMPANY

/s/ George A. Angle

GAA:mvs

cc: Mr. Henry Tyler

By letter dated September 27, 1967 (G.C. 6), Respondent sent Rodgers a check covering "the pay period ended September 17 plus the 2 days September 18 and September 19." This was the letter telling Rodgers he was not being paid for September 14 and 15, 1967 because he had concluded his testimony on September 13 and was merely advising the General Counsel the other 2 days.

Some 5 days later, on October 2, 1967, Angle wrote the letter to Rodgers which discharged him. This appears in the record as General Counsel's Exhibit No. 5 and, because reasons for the discharge are given in the letter, the body of it is set forth completely as follows:

Dear Mr. Rodgers:

During the time that you have been on suspension from the Kansas Refined Helium plant, I have obtained detailed reports from the plant personnel respecting the incident which brought on your suspension and, in addition, I have reviewed carefully your performance in the plant and your activities and attitude over the entire sixty-day period of your employment from July 19 to September 19.

The information now at hand is sufficient to convince me that the events in which you were involved on September 19, were not just an isolated instance of misconduct but, instead, were part of a recurring pattern of behavior from which it is perfectly clear that you are in the plant for the purpose of causing trouble for me and for the employees, rather than to perform the work and services for which you are paid. The principal events and circumstances to which I refer are these:

In addition to interfering with Mr. Tyler's management of the plant in the manner described in my letter of suspension, I have since learned that on the preceding Saturday, you came to the plant during your off-duty hours and talked to some of the employees who were on duty, about the N.L.R.B. Examiner's Report, and expressed opinions to them that KRH was required to post copies of the Report and made various observations about the affect of this Report on the plant and its personnel.

At the time you were reinstated, and for several days thereafter, it appears to me that you must have given untruthful accounts of the value and nature of the reorientation program which Mr. Tyler and I had worked out for you. I base this chiefly upon the fact that the statements of the National Labor Relations Board lawyers and their claims to the Court, are utterly inconsistent with your later testimony under oath on depositions and at the trial. Furthermore, your testimony in the depositions and at the trial of the contempt action was not accurate and departed from the testimony of others and from information furnished to me by other people at the plant.

In other words, it seems clear to me from what took place in the contempt hearing, that you deliberately set out to give false reports and help build a case of contempt against me which was not justified by the facts.

During the time that you have been remployed, you have kept notes concerning the activities of Mr. Tyler and other supervisors in the plant, taken down information concerning my telephone calls and requests for information at the plant, and you have turned this information, which really was none of your business, over to government authorities, presumably, in the hope that it would be useful in the attempted prosecution for civil and criminal contempt. I want to make it clear that I think you have the right to talk to government authorities or N.L.R.B. lawyers or anyone else, and you have the right to convey complaints to them, so long as they are truthful, which, I am of the opinion, they have not always been. But truthful or not, you do not have the right to spend time at the plant while I am paying you, gathering and writing down information which is really none of your concern, for any purpose, or to pass along to anyone, and that is what you have been doing.

The fact that you intend to continue utilizing company time to gather information which you think might be used to my disadvantage, is amply supported by your testimony in the depositions taken in the contempt action. You made it clear in your testimony that you would continue to use company time to gather and write down information as long as you felt it was to your advantage personally.

I believe that one of the most serious departures from proper conduct, is revealed by one of the notations in your notebook which I first learned about during the contempt trial and which I believe was to the effect that when Mr. Tyler asked you questions during your retraining program in order to find out what you had learned and what you had not learned in the program, you were very noncommittal in your answers. I am again convinced that this was a deliberate effort on your part to impair the effectiveness of a retraining program which Mr. Tyler was administering in good faith, at my instructions, and for your education so that you could assume normal duty in the plant. In this connection, I have also been furnished information from other employees to the effect that you did not seriously attempt to retrain yourself but, rather, stood around without asking questions or giving any indication of what you needed to learn in order to be properly trained to do your job.

You have presented me with very serious problems from the standpoint of your relationship with other employees in the plant, and these arise from two sources:

First, in the latest N.L.R.B. hearing, although subpoenaed as a witness by the government, you were not called upon to testify but, instead, sat beside the government lawyer and transmitted information to him from which to examine and cross-examine other employees in the plant. I could understand this and even overlook it, but your fellow employees resented it and I can understand their attitude as well.

Second, is the fact that according to other employees, some of the information which you gave from the witness stand in the contempt hearings and particularly your testimony that certain senior operators had neglected to carry out Mr. Tyler's instructions respecting your retraining, were false. This was a reflection upon your fellow employees which they deeply resented.

You are aware, of course, that since the decision of the Court of Appeals, I have had no obligation to continue your temporary reinstatement; however, I had made up my mind to continue your employment in the hope that you would straighten out after the contempt action was over, enter into the retraining program and become a good and qualified employee. I thought that once that case was successfully defended, perhaps you would stop your efforts to harass the management of KRH and the other employees, but it is perfectly apparent from your conduct between Friday, September 15, and Tuesday, September 19, when you were suspended, that your attitude and your conduct have not changed. It is now perfectly clear to me that you will not straighten out and will not become a satisfactory employee and that your continued presence in the plant will serve only to create difficulties between yourself and other employees, and continue to take the time and attention of Mr. Tyler and myself, and others who have the responsibility for the management and operation of that plant.

The Kansas Refined Helium plant is not a shoe factory or assembly line operation. This plant is a very technical, complex plant, the first ~~volume liquid helium~~ plant

ever built, the largest liquid helium plant in the world. It is a highly automated plant, but it is dependent entirely on the individual decisions made by the plant personnel. Often these decisions must be made within the matter of seconds both by the senior operator, charged with the responsibility of running the plant, and any one of the junior operators, under his supervision. Therefore, it is important that all KRH operating personnel be entirely familiar with the plant and their duties, alert and constantly 100% attentive to their duties in order to prevent a mistake that could possibly amount to thousands of dollars, and perhaps, injure or kill other employees. This responsibility falls primarily on the senior operator who is in complete charge of the plant operations and the operating personnel under him. I have several years of my life and most of my assets at stake in the successful operation of this plant. Given a choice, I cannot afford to have employees in the plant who have a desire to embarrass or harass the plant management, and who spend their time doing something else than learning their job and performing it.

Under these circumstances, I feel that I have no alternative but to discharge you, and that is the purpose and ultimate conclusion of this letter. I want to make it clear to you, again, that I have, in the past and will, in the future, comply with the orders of any court respecting the employment, continued employment, or reinstatement of any employees; but so long as I am free to determine whether or not I will employ you, I will have to base the decision upon your attitude and your performance, and

its comparison with the attitude and performance of other employees. I am sorry that your reinstatement at the plant has not been successful, but it has been entirely the result of your own conduct.

Very truly yours,

/s/ George A. Angle

E. Respondent's Defense, Analysis and Conclusions

There are three issues, according to the brief filed by Respondent, in this matter and they are as follows:

1. Does the Board have jurisdiction to move on the dismissal of Rodgers who was "temporarily reinstated" under a Federal District Court injunction?

2. Is Rodgers a "supervisor"?

3. Was Rodgers' false statement to the National Labor Relations Board which caused unfounded civil and criminal contempt proceedings to be brought against Respondent, together with Rodgers' other activities, proper grounds for dismissal, regardless of his supervisory or temporary reinstatement status?

As to 1), Respondent argues that the Board's authority is limited to protect employees relative to permanent employment but the District Court had authority for temporary employment under a temporary injunction. Accordingly, when Rodgers resumed work in July 1967, it was under temporary reinstatement from the District Court's injunction and, hence, the Board had no jurisdiction over this temporary reinstatement. This proposed reading is a notable example for looking at the bright side of a subject under scrutiny, but I find the words will not bear the suggested interpretation. It is true that the District Court is the forum for raising a question of whether or not a reinstatement under a temporary injunction fulfills the Court's order, but the National Labor Relations Act protects the employee from subsequent

discrimination once compliance with the Court Order is met. Rodgers' suspension and discharge were not made because the injunction had been lifted by the Circuit Court of Appeals. This is clearly stated by Respondent in its letter dated October 2, 1967, in which Angle stated, "You are aware, of course, that since the decision of the Court of Appeals, I have had no obligation to continue your temporary reinstatement; however, I had made up my mind to continue your employment in the hope that you would straighten out after the contempt action was over, go into the retraining program and become a good and qualified employee." This establishes the fact that Rodgers was retrained as an employee after the District Court's injunction had been removed. Thus, the jurisdiction of the District Court had been lifted.

As to the second proposition, or question of whether Rodgers was a "supervisor" it is enough to say that this question need not be resolved in this case. Whatever Rodgers' position was as a senior operator before his discharge in 1966, it is clear that from July to September 1967, he was not a senior operator by the admission of Respondent's own counsel, and was no "supervisor" in these proceedings. This does present a problem with respect to the Remedy. A remedy of reinstatement in this case could only go to reinstatement of Rodgers as an employee undergoing a retraining program for senior operators as that is all that is before me. Hence, I do not pass on the question of reinstatement under the Goldberg decision, but if such is finally ordered, it, and not this decision, will govern the ultimate reinstatement of Rodgers.

As to the third issue in the brief, I have already discussed and found that Respondent did not sustain the burden of proof that Rodgers gave false statements and, hence, this could not have been a cause for the discharge. As to the other activities, they are related in the letter of September 19 that Rodgers "insisted" on "immediately" posting

material on the bulletin board and "insisted" that Tyler read the document, and attempted to make a long distance telephone call all at a time when the plant was undergoing emergency conditions. Angle characterized Tyler as being "extremely busy, as was everyone else in the plant," and that Rodgers selected this time "to create a disturbance." The credited testimony, however, is to the contrary.[2/] Rodgers first asked Tyler if he had a few moments for a discussion and Tyler invited him into his office where they sat down and discussed the problem. At the time of the discussion with Rodgers, Tyler did not indicate that he was under pressure or that Rodgers was making a nuisance of himself or was not performing something he should have been doing in an emergency situation. When Tyler told Rodgers that he could not make the telephone call, that ended the matter and Rodgers left. This activity of Rodgers cannot fairly be said to rise to the importance of his attempting to "dictate to Mr. Tyler what is to go on the bulletin board or anything else with respect to the operation and maintenance of this plant and its personnel." Rodgers had a protected right to discuss the Goldberg decision after securing Tyler's permission to talk for a few minutes. Whether or not in fact there was an "emergency situation," Tyler took much more time in making two telephone calls that day to Angle reporting on Rodgers than he took up in talking to Rodgers. Tyler admitted spending "ten to fifteen minutes" in his first call and longer in the

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[2/] The demeanor of the witnesses has played a most important part in my crediting Rodgers over witnesses for Respondent where testimony was in direct conflict. Rodgers was subjected to highly critical and sharp cross-examination by Respondent's counsel, yet, his testimony had the ring of truth and sincerity. On the other hand, Respondent's witnesses, on crucial testimony, appeared to flounder and seemed embarrassed over what they were saying.

second. Thus, he was not too busy to talk to Rodgers.[3/] Accordingly, I find that the reason given for the suspension is a pretext and the real reason was Rodgers' attempt to get the Goldberg decision posted on the bulletin board, which conduct would fall within protected activity within the meaning of the Act. By suspending him without pay under these circumstances, Respondent discriminated against Rodgers in regard to tenure and terms and conditions of employment to discourage union activity in violation of Section 8(a)(3) and (1) of the Act.

As to the discharge letter of October 2, 1967, Respondent indicates in the second paragraph that Rodgers' activities were causing him trouble. As the only activities established by the evidence was protected union activities, it is clear that these were motiving Angle. The first instance referred to was the protected union activity of Rodgers in discussing the Goldberg unfair labor practice decision on Saturday with some other employees. The second incident relates to the allegation that Rodgers gave untruthful accounts, which allegation has not been substantiated as found above. The next allegation in the letter has to do with some notes Rodgers took. He admitted to taking notes, about which there was no restriction or rule. He was doing this for his own information and protection, and he refreshed his recollection in giving testimony in the contempt case from the notes. Under these circumstances, Respondent cannot persuasively urge me to believe this had anything to do with his discharge. The point concerning the reference by Rodgers that he was "noncommittal" has been previously discussed and found to lack merit. Respondent then admits that Rodgers' testimony at the National Labor Relations Board hearing had something to do with his discharge. This

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3/ Tyler then changed his testimony and said the calls to Angle were short, although the second one involved a conference call with the attorney involved. I believe his first impression is more accurate and was given before he had fully thought out all of the consequences.

is an admission of a clear violation of Section 8(a)(4) of the Act, and I so find. As the testimony given by Rodgers has not been found false, there could be no legal grounds for fellow employees to be resentful and this excuse for the discharge is found to be without merit. Accordingly, I find that the letter of October 2, 1967 is an admission by Respondent that one of the reasons and, indeed, a controlling reason, for Rodgers' discharge was because he gave testimony in a Board proceeding. Employees are protected from discharge for this reason by virtue of Section 8(a)(4) of the Act.[4/]

F. Conclusions of Law

1. Respondent is, and during all times material has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, Oil, Chemical and Atomic Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The General Counsel has established by a preponderance of the evidence that Respondent has violated Section 8(a)(1), (3) and (4) of the Act as set forth below. The Remedy therefor will be provided below.

G. The Remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act in the particulars set forth in the Recommended Order.

[4/] Sec. 8(a) It shall be an unfair labor practice for an employer —

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

For the reasons which are stated in Consolidated Industries, Inc., 118 NLRB 60, 61, and cases cited therein, I shall recommend a broad cease-and-desist Order. Where the recommendation is to make an employee whole for any loss of earnings suffered as a result of discharge or other discriminatory action, the sum to be paid to him shall be computed in accordance with the formula set in F. W. Woolworth Co., 90 NLRB 289, with interest thereon at 6 percent per annum, as provided in Isis Plumbing & Heating Co., 138 NLRB 716.

II. Recommended Order

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, it is recommended that the Respondent, George A. Angle, d/b/a Kansas Refined Helium Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Oil, Chemical and Atomic Workers International Union, AFL-CIO, or any other labor organization, by suspending employees or by discriminating against employees in any other manner in regard to hire, tenure, or any other term or condition of employment.

(b) Discharging or in any other manner discriminating against employees because they have given testimony in a proceeding under the Act.

(c) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self organization, to form, join, or assist Oil, Chemical and Atomic Workers International Union, AFL-CIO, or any other labor organization, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

2. Take the following affirmative action which I find will effectuate the purposes of the act:

(a) Offer to Arel Rodgers immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, in the manner described in "The Remedy" Section of this Decision.[5/]

(b) Notify Arel Rodgers, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military and Training Service Act, as amended, after discharge from the Armed Forces.

(c) Preserve, and upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

(d) Post at its plant located outside the corporate limits of Otis, Kansas, copies of the attached notice marked "Appendix."[6/] Copies of said notice on forms provided by the Regional Director for Region 17, shall be signed by George A. Angle, d/b/a Kansas Refined

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[5/] It is understood that if the final outcome of the "Goldberg decision," referred to herein, is that Rodgers is to be reinstated as a senior operator, or its equivalent, it takes precedence over this case as to the job to which Rodgers should be reinstated.

[6/] In the event that this Recommended Order is adopted by the Board, the words, "a Decision and Order" shall be substituted for the words, "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

Helium Company. The posting shall take place immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for Region 17, in writing, within 20 days from the date of receipt of this Decision what steps Respondent has taken to comply herewith.[7/]

Dated at Washington, D. C. July 2, 1968.

/s/ George L. Powell
Trial Examiner

7/ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 17, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

NLRB-4632
(1-65)

TXD-387-68

APPENDIX

NOTICE TO ALL EMPLOYEES
PURSUANT TO
THE RECOMMENDED ORDER OF A TRIAL EXAMINER OF THE
NATIONAL LABOR RELATIONS BOARD
and in order to effectuate the policies of the
NATIONAL LABOR RELATIONS ACT
we hereby notify our employees that:

WE WILL NOT discourage membership in OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, or any other labor organization, by suspending employees or by discriminating against our employees in any other manner in regard to hire, tenure, or any other term or condition of employment.

WE WILL NOT discharge or in any other manner discriminate against our employees because they have given testimony under the Act.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of the right to self organization, to form labor organizations, to join or assist the Union, or any other labor organization, or engage in other concerted activites for the purpose of collective bargaining or other such mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

WE WILL OFFER to Arel Rodgers, full reinstatement to his former or substantially equivalent position without loss of seniority or other rights and privileges, and make him whole for any pay he lost because of the discrimination against him, with interest.

All our employees are free to become, remain, or refrain from becoming or remaining, members of Oil, Chemical and Atomic Workers International Union, AFL-CIO, or any other labor organization.

GEORGE A. ANGLE
KANSAS REFINED HELIUM COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

NOTE: — We will notify Arel Rodgers, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This Notice will remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 610 Federal Office Building, 601 E. 12th Street, Kansas City, Missouri 64106 (Tel. No. 374-5282).

DECISION AND ORDER

On July 2, 1968, Trial Examiner George L. Powell issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent, the Charging Party, and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1/]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, George A. Angle, d/b/a Kansas Refined Helium Company, Otis, Kansas, its officers, agents, successors, and assigns,

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[1/] Cf. George A. Angle, d/b/a Kansas Refined Helium Company, 176 NLRB No. 115, concurrently issued herewith, wherein senior operators were found not to be supervisors within the meaning of the Act.

shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C. June 25, 1969.

/s/ John H. Fanning, Member

/s/ Howard Jenkins, Jr., Member

/s/ Sam Zagoria, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 23,295 and 23,300

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY, *Intervenor.*

Nos. 23,750 and 23,751

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Petitions to Review and a Cross-Petition to Enforce Decisions and Orders of the National Labor Relations Board

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BRIEF FOR OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 26 1969

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Nos. 23,750 and 23,751

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Petitions to Review and a Cross-Petition to Enforce Decisions and Orders of the National Labor Relations Board

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BRIEF FOR OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO

STATEMENT OF ISSUES PRESENTED

The issues presented by the petitions for review in Nos. 23,295 and 23,300[1] are:

[1] Although the Court, by an order dated February 16, 1970, consolidated these cases for all purposes, this brief will be limited to the issues presented by the Union's petition for review. At this stage, the

Whether the Board failed properly to exercise its statutory discretion by refusing, without explanation or statement of reasons, to grant the following relief in its remedial orders:

> (1) full back pay, without deduction of interim earnings, to all employees who were unlawfully discharged by the employer herein, and
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> (2) a provision permitting Arel Rodgers, one of the discharged employees, to refuse reinstatement and continue receiving back pay until he finds other substantially equivalent employment.

These cases have not previously been before this Court, except on motions filed by George A. Angle to dismiss the petitions in Nos. 23,295 and 23,300 or transfer these cases to the Tenth Circuit. That motion was denied by the Court on February 13, 1970.

REFERENCES TO RULINGS

The first decision of the NLRB to be reviewed herein is reported as 176 N.L.R.B. No. 115, and is reproduced in the Appendix at pp. 613-616. In that decision, the Board adopted the findings of fact and conclusions of law set forth in a Trial Examiner's Preliminary Decision issued on September 12, 1967 (A. 508), a Trial Examiner's Supplemental Decision issued on December 20, 1967 (A. 561), and a Trial Examiner's Decision and Report, issued on December 30, 1968 (A. 601).

The second decision of the NLRB to be reviewed herein is reported as 176 N.L.R.B. No. 116, and is reproduced in the Appendix at pp. 755-56. In that decision, the Board adopted the findings of fact and conclusions of law set forth in a Trial Examiner's Decision issued on July 2, 1968 (A. 728).

Union does not know what issues will be presented in Nos. 23,750 and 23,751, but reserves the right to deal with those issues in its Reply Brief.

STATEMENT OF THE CASE

These consolidated cases are before the Court on petitions for review of two separate but related decisions of the National Labor Relations Board. In both cases the Board found that George A. Angle, doing business as Kansas Refined Helium Company (hereinafter referred to as the Company), had committed numberous unfair labor practices in violation of Sections 8(a)(1), (3), (4), and (5) of the National Labor Relations Act. 29 U.S.C. §§ 158(a)(1), (3), (4), (5). In Nos. 23,750 and 23,751, the Company seeks review of the Board's unfair labor practice findings, and the Board has filed a cross-application for enforcement of its remedial orders. In Nos. 23,295 and 23,300, Oil, Chemical and Atomic Workers International Union (hereinafter referred to as the Union) seeks review of the Board's orders insofar as they failed to include certain additional relief which the Union (and, in one case, the Board's General Counsel) had requested.

This brief is submitted in support of the Union's petitions for review.

A. The Company's Unfair Labor Practices

In June 1966, the Union began to organize the employees of the Company's plant at Otis, Kansas. At that time, the plant, which is a highly automated facility engaged in the extraction of helium and other by-products from natural gas, had approximately 24 employees (A. 511-12). On June 29, the Union notified the Company by letter that it represented a majority of these employees, and requested recognition and bargaining. The next day, the Union filed a petition with the National Labor Relations Board for a representation election.

By a letter dated July 6, 1966, the Company refused the Union's request for recognition, stating that it doubted the Union's majority and desired a Board-conducted election (A. 513). Thereafter, the Company launched a campaign

of coercion and intimidation designed to prevent the employees from exercising their statutory right to organize and bargain collectively. Set forth below, in chronological order, is a summary of the unfair labor practices which the Board found the Company committed.[2]

1. *The Unlawful Refusal To Bargain.* The Board held that the Company's initial refusal to recognize the Union was itself an unfair labor practice. On the basis of the Company's subsequent "massive and systematic violations" (A. 615 n. 4), the Board concluded that its refusal to recognize the Union was simply a device to gain time in order to dissipate the Union's majority by unlawful means. The Board further found that the Union was supported by a majority of the employees in an appropriate bargaining unit at the time it first requested recognition (A. 588).

2. *The Angle Speech.* After opening his antiunion campaign with a series of letters to the employees, George Angle, the sole owner of the Company, sponsored a dinner for the employees on July 28, 1966. At the conclusion of that dinner, Angle delivered an angry speech in which he threatened to close the plant rather than deal with the Union. (A. 532-33)

3. *The Threat of Discharge.* On August 27, Norman A. Klein, the Company's comptroller and plant manager, told one of the employees, one Russell Bishop, that Mr. Angle "was going to get rid of all the union agitators or organizers." (A. 534-35)

4. *The Coercive Interviews.* Between September 13 and September 19, Angle held a series of individual interviews with each employee in the plant. These interviews lasted anywhere from one-half hour to 3½ hours each. Each employee was asked to express his view as to the causes of the "dissension" in the plant, and was required to examine

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[2]The facts set forth in this brief are all taken from the findings of the Trial Examiners in the two cases, which were adopted in full by the Board. For purposes of this review proceeding, the Union does not challenge any of the Board's findings of fact.

certain anonymous letters criticizing the management of the plant which Angle had received. Each employee was also asked whether he had signed a Union card, and those who answered in the affirmative were asked why they had done so. They were also asked to identify those employees who were supporting or promoting the Union. According to Angle's own testimony, he told each employee that he had to find "this group of malcontents, the agitators that were . . . causing this tremendous dissension . . . and get them out the gate and never to return. . . ." (A. 536) The six employees who testified concerning these interviews (including one who was called as a witness for the Company) all confirmed that Angle had openly, emphatically, and repeatedly threatened that he would discharge anyone who supported the Union. (A. 536-44)

5. *The Discriminatory Discharges.* The day after he had completed the interviews described above, Angle called six employees to his office and handed them identical letters of termination, with the brief comment: "I don't like long goodbyes; pick up your gear and get out." Only one employee, Russell Sims, stayed behind to discuss the matter further. When he asked for an explanation of his discharge, Angle told him "that he would not permit the Union or the National Labor Relations Board to come in and tell him what to do, and that those discharged had caused the 'trouble' at the plant." He further stated that "if he got rid of these six it would scare the remainder of the employees . . . ." (A. 546) The Board found that each of the employees was discharged "to discourage their membership, and that of other employees, in the Union." (A. 550)

6. *The Unilateral Pay Increases.* Shortly after the Union requested recognition and filed its petition for an election, Angle had stated in a letter to the employees dated July 27 that he had "raised wages in all other divisions of the Company," but that "the Union can file unfair labor practices charges against us if we either give or promise to give new raises to any employees that the Union claims to represent."

The Union promptly responded with a letter stating that it "will not file unfair labor practice charges against you or your company by reason of your granting to employees of KRH the same or similar wage increases as granted to your other employees so long as such wage increases are granted on an equitable and non-discriminatory manner . . . ." (A. 544-45) The Company, however, took no further action until September 21, the day following the six discharges—which was also one week before the scheduled representation election. On that date, the Company announced wage increases for the remaining employees ranging from 15 cents to $1.00 per hour. The Board held that the Union's waiver letter did not apply to these increases, since they were not granted "in an equitable and nondiscriminatory manner." The Board further held that these increases, announced just prior to a scheduled representation election, constituted unlawful interference with the employees' right of self-organization (A. 545).

7. *The Second Discharge of Arel Rodgers.* The initial unfair labor practice complaint against the Company was issued on November 16, 1966. Thereafter, the Board's Regional Director applied to the United States District Court for the District of Kansas for a preliminary injunction under Section 10(j) of the Act, 29 U.S.C. §160(j), to require, *inter alia*, that the six dischargees be reinstated pending the Board's decision on the merits of the complaint. On April 5, 1967, the court issued such an injunction. See *Sacks v. Angle*, 65 L.R.R.M. 2098 (April 5, 1967). Two of the discharged employees, Thomas Garrett and Arel Rodgers, applied for reinstatement under the injunction. Rodgers, however, was never restored to his prior position of "senior operator." Instead, he was assigned to a so-called "retraining program," under which he spent most of his time sitting in an office reviewing training manuals and flow charts, rarely venturing out into the plant except to examine some equipment or observe other employees at work. (A. 731-33).

The Board, taking the position that this "retraining program" did not constitute compliance with the court's decree, initiated contempt proceedings. The Company, meanwhile, appealed the injunction, and on August 28, 1967, the Court of Appeals for the Tenth Circuit issued a decision reversing the injunction as to Rodgers and one other senior operator on the ground that any relief for the two discharged senior operators should await a final Board determination as to whether they are "employees" or "supervisors" under the Act. *Angle v. Sacks*, 382 F.2d 655, 661 (1967). Thereafter, on September 13-15, the District Court held a hearing on the Board's contempt petition, and Rodgers appeared as a witness. At the conclusion of the hearing, the court, without opinion, dismissed the petition.

On September 12, 1967, the day before the contempt hearing, the Board's Trial Examiner issued his decision in the underlying unfair labor practice proceeding. On Saturday, September 16, the day after the contempt hearing was concluded, Rodgers came to the plant (although he was not scheduled to work that day) and discussed the Examiner's decision with several employees, at which time he expressed the opinion that the Company was obliged to post the decision in the plant. On the following Tuesday, September 19, Rodgers asked the Company's Plant Manager, Henry Tyler, whether the Examiner's decision had to be posted in the plant. When Tyler said he didn't know, Rodgers asked permission to call the Regional Office of the Board to find out. Tyler at first granted such permission, but then changed his mind and said he wanted to call "Wichita"—where Angle had his office. Rodgers then returned to his job, and Tyler had two lengthy telephone conversations with Angle. (A. 735-37)

The next morning, Tyler handed Rodgers a letter, signed by Angle, stating that he was being suspended for his actions the previous day, which the letter characterized as creating "a disturbance concerning matters for which you have no

responsibility and which are entirely foreign to your duties in the plant." (A. 737-39) Thereafter, on October 2, 1967, Angle sent Rodgers a lengthy letter advising him that he was being discharged. (A. 739-45) The letter accused Rodgers of "causing trouble for me and the employees," and specifically mentioned Rodgers' conversations with fellow employees on September 16 and with Tyler on September 19 concerning the decision of the Trial Examiner. In addition, the letter charged that Rodgers had "kept notes concerning the activities of Mr. Tyler and other supervisors in the plant," had failed to cooperate in his "retraining program," had assisted NLRB counsel in the conduct of the contempt trial, and had given "false" testimony in that trial.

The letter also referred to the decision of the Court of Appeals in the injunction matter, but expressly disclaimed any connection between that decision and the discharge:

> "You are aware, of course, that since the decision of the Court of Appeals, I have had no obligation to continue your temporary reinstatement; however, I made up my mind to continue your employment in the hope that you would straighten out after the contempt action was over, enter into the retraining program and become a good and qualified employee. I thought that once that case was successfully defended, perhaps you would stop your efforts to harass the management of KRH and the other employees, but it is perfectly apparent from your conduct between Friday, September 15 and Tuesday, September 19, when you were suspended, that your attitude and your conduct have not changed." (A. 743)

This second discharge of Arel Rodgers became the subject of a new unfair labor practice proceeding, in which the Board found that there was no substance to the ostensible grounds given for the Company's action, and that the real purpose of the discharge was to discourage Union membership and to punish Rodgers for his testimony in the contempt proceeding, in violation of Sections 8(a)(3) and 8(a)(4) of the Act, 29 U.S.C. §§ 158 (a)(3), (4).

B. The Remedies Provided By The Board

To remedy the violations summarized above, the Board ordered the Company to cease and desist from its unlawful activities, to reinstate the employees who had been discriminatorily discharged and award them back pay computed in the usual manner, to recognize and bargain with the Union, and to post the customary notices.

In the initial unfair labor practice case, both the Union and the Board's General Counsel contended that the egregious and repetitive nature of the Company's violations called for an extraordinary remedy. Specifically, they urged that the six discharged employees be awarded full backpay without deduction of "interim earnings"—i.e., income earned elsewhere in the period between discharge and reinstatement. The Trial Examiner refused to recommend this relief on the following grounds:

> "I am not convinced that the remedy requested by the General Counsel could be justified, under the circumstances of this case, as necessary or appropriate to effectuate the policies of the Act. Granted that Respondent's unfair labor practices were flagrant and that some of his statements may be construed as threats to continue or repeat them, it has not been shown that the normal processes and remedies of the Board and the courts will be insufficient to remedy them. The record does not show Respondent ever to have previously violated the Act—much less that he has been so persistent a violator that only by so drastic a remedial measure as that sought by the General Counsel herein could the purposes of the Act be effectuated. The proposal to eliminate, at this stage, the usual offset of interim earnings seems to me much closer to a punitive than a remedial measure. Punitive measures have not been considered authorized by the Act and I shall not recommend this one." (A. 554)

The Union excepted to this aspect of the Trial Examiner's Decision, but the Board adopted the remedial order recommended by the Examiner without commenting on this issue.

In the second unfair labor practice case (involving the second discharge of Arel Rodgers), the Union renewed its request that backpay be computed without deduction of interim earnings, and also urged that, because of the Company's unusual hostility to Rodgers, he should be given the right to decline reinstatement and seek other employment, with his backpay continuing until he either accepts reinstatement or finds substantially equivalent employment elsewhere. The Board denied this relief without comment.

ARGUMENT

I

THE BOARD ERRED IN FAILING TO EXERCISE ITS DISCRETION WHETHER TO GRANT THE DISCHARGED EMPLOYEES FULL BACK PAY WITHOUT DEDUCTION OF INTERIM EARNINGS

The National Labor Relations Act directs the Board, when it finds that an unfair labor practice has been committed, to order the violator "to cease and desist from such unfair labor practice, and *to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act . . .*" §10(c), 29 U.S.C. §160(c) (emphasis added). The Board's customary practice, in cases involving discriminatory discharge of employees, is to order reinstatement of such employees with "net" back pay—i.e., the amount which the employee would have earned if he had not been discharged, minus any amounts which he earned elsewhere in the interim between his discharge and his reinstatement. In the present case, however, both the Union and the Board's General Counsel urged the Board to grant the dischargees full back pay, without deduction of interim earnings, on the ground that such relief was required in order to "effectuate the policies of the Act." The Board rejected this proposal without discussion. For the reasons set forth below, we submit that this issue should be remanded to the Board for further consideration.

A. The Inadequacy Of The Net Back Pay Remedy

In the circumstances of this case, the usual back pay remedy is plainly inadequate. We have here an employer who repeatedly told each of his employees, collectively and individually, that he would discharge anyone who supported the Union. He then carried out his threat by discharging six employees—25% of his work force—including two of his six key "senior operators." To "effectuate the policies of

the Act" in this situation calls for a remedy which will not only compensate the six employees as fully as possible for all the injury and loss which they suffered as a result of the discharge, but which will also assure all other employees that the law will provide them with adequate and meaningful relief if they are discharged for exercising their statutory rights. Mere reinstatement with "net" back pay, four years after the event, utterly fails to achieve these objectives.

Clearly, "net" back pay does not make the dischargees "whole". In strictly financial terms, an inflated 1970 dollar does not equal a 1966 dollar. The 6 percent interest which the Board allows on back pay hardly makes up for this loss of purchasing power and certainly is far below the interest rate which the employees would have had to pay on any money they may have been forced to borrow because of their discharge. Moreover, to the ordinary wage-earner, a loss of income for any significant period is an economic disaster which cannot be cured simply by a retroactive payment made years later. When a working man loses his job, his entire life, and that of his family, is immediately affected. He must sharply reduce his expenditures for such necessities as food and clothing; he must forego a new car or a new TV or a vacation trip; he may be forced to deny his children a college education; he may even be evicted from his home or have his furniture or other property repossessed. Although the precise degree of the hardship may vary widely from case to case, it is inevitable that hardships of this type will flow from loss of employment.

In addition, loss of employment—especially discharge—is a humiliating, emotionally distressing experience. No one likes to be "fired"" Nor does anyone enjoy standing in unemployment compensation lines, or the frustrating and exhausting process of searching for another job. Net back pay simply does not provide compensation for these types of injury.

The Board itself, in 1950, modified its back pay remedy

to take account of some of the factors discussed above. Prior to that year, the Board's practice was simply to compute the total wages the employee would have earned during the period of his discharge, and to subtract the total amounts which he earned elsewhere. The Board discovered, however, that some employees were waiving their reinstatement rights, thus terminating the employer's back-pay liability, in order to prevent their earnings in later periods from reducing the employer's back-pay liability for earlier periods. In response to this problem, the Board decided to compute "net" back pay on the basis of calendar quarters, so that an employee's earnings in one quarter would not reduce the amount owed for another quarter. *F. W. Woolworth Co.*, 90 N.L.R.B. 289 (1950). In explaining the reasons for its decision, the Board stated:

> "Unemployment or employment at lesser wages may have resulted in the exhaustion of the employee's savings, his incurrence of debts, and even in the deprivation of the necessities of life. Our observation on this score accords with the view of the United States Supreme Court which, in treating this general problem, recognized that the worker is 'not likely to have sufficient resources' to sustain the necessary 'minimum standard of living necessary for health, efficiency, and general well being' during such periods. The consequent desire for the victim of discrimination to recoup the maximum amount possible in order to offset such losses, even if this must be accomplished at the price of relinquishing the right to be returned to his former position, may readily be anticipated." 90 N.L.R.B. at 292.

Although the *Woolworth* formula was a salutary reform, it still yields a grossly inadequate sum, which utterly fails to provide any compensation for the hardship and suffering which is occasioned by a loss of employment. In other areas of the law, injuries of this type are compensable, why not under the National Labor Relations Act?

Admittedly, there is no way to place a precise dollar

value on the injury which an employee suffers as a result of a discharge. Nor are we suggesting that the Board should attempt to do so. What we are suggesting is that the Board should at least recognize that "net" back pay is not necessarily full and adequate compensation, and that it should, when circumstances warrant, award full back pay without deduction of interim earnings, as a means of providing more complete compensation for the employee's injury. Such relief is entirely appropriate in an aggravated case such as this.

The impact of the employer's egregious conduct upon employees other than those actually discharged is likewise an essential consideration. When an employer acts with as much cynicism, determination, and flagrant disregard for law as did the Company in this case, all of his employees are bound to fear a repetition of such conduct. Particularly in light of what happened to Arel Rodgers, who suffered continuing harassment and was eventually again discharged after being reinstated pursuant to a court injunction, the employees will undoubtedly be skeptical of the efficacy of a cease-and-desist order. Where it is apparent that the remedy afforded by the Board for unlawful discharge is wholly inadequate and fails to compensate the employee for the tremendous hardship suffered, not only the dischargee but other employees as well will be reluctant to "stick their necks out" and to risk their jobs by engaging in union activities. The relief granted by the Board in this case is thus insufficient to dissipate the intimidating effect of the employer's aggravated unfair labor practices.

In short, when an employer has repeatedly committed particularly egregious violations, it is appropriate for the Board to provide extraordinary relief—not to punish the employer, but to make the dischargees whole and to reassure all of the employees that they can exercise their statutory rights with full assurance of adequate compensation in the event of retaliation by the company. Only in

this way, we believe, can the policies of the Act be meaningfully effectuated.

B. The Board's Failure To Give Proper Consideration To The Remedy Issue

We recognize, of course, that the Board has very broad discretion in determining what remedy will "effectuate the purposes" of the Act. The Board is obliged, however, to "give clear indication that it has exercised the discretion with which Congress has empowered it." *Phelps Dodge Corp. v. NLRB.* 313 U.S. 177, 197 (1941). In the present case, the Board has simply failed to meet this obligation. Cf. *International Chemical Workers Union v. NLRB*, 395 F.2d 639 (D.C. Cir. 1968).

It is important to remember that there were two separate unfair labor practice cases which were heard at separate times before two separate Trial Examiners. The remedy issue was raised in both cases. Yet the only discussion of this issue is found in the decision of the Trial Examiner in the first case, which was rendered before the events in the second case had even occurred. That Examiner denied the relief requested on the following three grounds:

(1) "[I]t has not been shown that the normal processes and remedies of the Board and the court will be insufficient to remedy" the violations.

(2) "The record does not show Respondent ever to have previously violated the Act—much less that he has been so persistent a violator that only by so drastic a remedial measure as that sought by the General Counsel herein could the purposes of the Act be effectuated."

(3) "The proposal to eliminate, at this stage, the usual offset of interim earnings seems to me much closer to a punitive than a remedial measure." (A. 554).

Whatever validity these three points may have had at the time they were originally written, they obviously required

some re-examination by the Board in the light of subsequent events. Surely the record in the second case, which involved the Company's behavior toward and ultimate discharge of Arel Rodgers after his reinstatement pursuant to a court order, sheds some additional light on whether "the normal processes and remedies of the Board and the court will be insufficient" to effectuate the Act. And certainly the second discharge of Rodgers showed the Company to be a "persistent" violator of the Act. Finally, the tentative nature of the Examiner's last comment—that the proposed remedy "*at this stage* . . . seems to me much closer to a punitive than a remedial measure"—clearly indicates that his judgment was based on the existing circumstances as they appeared at that particular time.

The Examiner in the second case did not comment on the remedy question at all, and the Board, although it considered both cases together and issued its two decisions on the same day, simply adopted the decisions of the Examiners in both cases without further discussion. Thus, there is absolutely no indication that the Board ever considered the remedy question in the light of the complete record of both cases.

Under these circumstances, the cases must be remanded for further consideration of the remedy issue, unless this Court determines that the Board would in any event have lacked the power to grant the relief which the Union requested. Since the Company will no doubt contend that the Board did lack such power, we turn now to a discussion of that issue.

C. The Authority Of The Board To Grant The Relief Requested

Although the Board's practice has always been to deduct an employee's interim earnings in determining the amount of back pay he is to receive, there is nothing in the statute which requires that this be done. On the contrary, the Board's statutory authority to award back pay is both ex-

press and unqualified. Section 10(c), 29 U.S.C. §160(c), empowers the Board to order "such affirmative action *including reinstatement of employees with or without back pay*, as will effectuate the policies of this Act." (Emphasis added).

The Board's power to grant back pay in an amount greater than the actual amount lost as a result of the discharge is recognized in *NLRB v. Seven-Up Bottling Co.*, 344 U.S. 344 (1953). In that case, the Fifth Circuit had held that the Board's recently-adopted *Woolworth* formula, providing for computation of back pay on a quarterly basis, was in excess of the Board's power because it tended to yield an amount greater than the amount of the employee's net loss. "The employee is entitled to be made whole," said that court, "but no more." 196 F.2d 424, 427 (5th Cir. 1952). The Supreme Court, however, construed the Board's authority much more broadly:

> "When the Board, 'in the exercise of its informed discretion,' makes an order of restoration by way of back pay, the order 'should stand unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act.' Virginia Electric & Power Co. v. National Labor Relations Board, 319 U.S. 533, 540. The Woolworth formula, as a general method of computation, is, under this test, proof against judicial challenge." 344 U.S. at 346-47.

It follows, we submit, that the Board could also award full back pay, without any deduction for interim earnings, if it found that such relief was necessary to effectuate the purposes of the Act. See also *NLRB v. Gullett Gin Co.*, 340 U.S. 361 (1950) (Board need not deduct unemployment compensation benefits received by employee in computing back pay).

Of course, the Board could not award gross back pay for the purpose of punishing the employer. See *Republic Steel*

Corp. v. NLRB, 311 U.S. 7 (1940). Nor could it justify such an award simply by asserting that it would be too great an administrative burden to attempt to compute the employee's interim earnings. See *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 197-200 (1941). But if the Board were to determine, in the exercise of its statutory discretion, that an award of full back pay was required to fully compensate the dischargees and to prevent the employer's violations from having a continuing intimidating effect upon all employees, it would clearly have the statutory authority to make such an award.

The fact that the Board has the power to grant such relief does not, of course, mean that it has an obligation to do so. We recognize that this is a matter for the Board to decide. But where, as here, the arguments in favor of such relief are substantial, the Board has an obligation at least to consider those arguments and to exercise its statutory discretion. Since it has so far failed to do so, the Court should remand the issue to the Board for further consideration.

II

THE BOARD ERRED IN FAILING TO EXERCISE ITS DISCRETION WHETHER TO GRANT AREL RODGERS THE RIGHT TO DECLINE REINSTATEMENT AND CONTINUE RECEIVING BACK PAY UNTIL HE FINDS SUBSTANTIALLY EQUIVALENT EMPLOYMENT.

In the second unfair labor practice case, involving the second discharge of Arel Rodgers, the Union urged the Board to give Rodgers an option to decline reinstatement and continue receiving back pay until he finds substantially equivalent employment. The basis for this request was the unusual hostility which Angle had displayed toward Rodgers, and the unusual harassment which Rodgers suffered during the period of his first reinstatement. In light of

these circumstances, the Union contended that Rodgers should not be forced to return to his job if he is unwilling to do so.

Ordinarily, an employer's liability for back pay terminates when the discharged employee is offered reinstatement. In some circumstances, however, the Board has given employees the right to decline reinstatement and continue receiving back pay until they obtain substantially equivalent employment elsewhere. This has been done, for example, in cases in which the employer has moved his plant to a distant location to avoid his obligations under the Act. *E.g., Sidele Fashions, Inc.*, 133 N.L.R.B. 547, 554-55 (1961), *enforced*, 305 F.2d 825 (3d Cir. 1962); *Garwin Corp.*, 153 N.L.R.B. 664, 681 (1965), *modified on other grounds*, 374 F.2d 295 (D.C. Cir. 1967). In those cases, the Board directed the employer to offer the employees employment at the new location, and to pay the moving costs of those employees who accept such reinstatement. The Board also provided, however, that employees who declined to move would continue to receive back pay until they found substantially equivalent employment in their home communities.

Although Arel Rodgers would not have to move his home to accept reinstatement, he would have to return to an employer who discharged him not once but twice, and who treated him with utmost contempt and abuse during the period of his initial reinstatement. In light of the small size of the work force in this plant, and the degree to which Angle as sole proprietor involves himself in day-to-day management, Rodgers would have good reason to feel that he would continue to suffer a variety of forms of harassment and discrimination if he returned to his job. It is no answer to say that Rodgers would have legal remedies for such conduct. The history of this case shows how difficult it is, and how long it takes, to obtain relief for even the most flagrant kinds of unfair labor practices.

In any event, the Board utterly failed to address itself to this issue. The cases cited above clearly establish that the

Board would have authority to grant the relief requested if it found that such relief was required to effectuate the purposes of the Act. Accordingly, the Board was required to exercise its discretion to determine whether such relief was warranted in this case, and to give reasons for its decision. Since it has failed to do so, the matter must be remanded to the Board for further consideration.

III

THE BOARD'S EXISTING ORDERS SHOULD BE ENFORCED FORTHWITH WITHOUT AWAITING THE BOARD'S DECISION ON REMAND WITH RESPECT TO THE REMEDY ISSUES.

As we have demonstrated above, these cases must be remanded to the Board for further consideration of the two remedy issues raised by the Union and the Board's General Counsel. Such remand, however, should not prevent the Court from enforcing the Board's existing orders immediately. There is no reason why the dischargees should have to wait any longer for their reinstatement, or for the net back pay which the Board has already awarded them. Nor should the other employees have to wait any longer to exercise their rights to bargain collectively.

With respect to Arel Rodgers, the Court's order should provide that he may accept reinstatement provisionally, without prejudice to his right to change his position if the Board ultimately determines that he should have been given an option to seek other employment without forfeiting his back pay. And with respect to all the dischargees, if the Board ultimately decides that they should have received full back pay without deduction of interim earnings, the balance due to them could be paid at that time.

Admittedly, this procedure will require the Company and the Board to compute each dischargee's interim earnings, even though the Board's ultimate decision on remand may render such computation unnecessary. But this is a very

small burden compared to the hardship which the employees would suffer if they had to await the Board's decision on remand (and possible judicial review of that decision) before obtaining any relief at all.

CONCLUSION

For the reasons stated above, this Court should remand these cases to the Board for further consideration of (1) whether the discharged employees should receive full back pay without deduction of interim earnings and (2) whether Arel Rodgers should be given the right to decline reinstatement and continue receiving back pay until he finds substantially equivalent employment. In addition, the Court should enforce the Board's existing orders, with the proviso that Arel Rodger's acceptance of reinstatement shall be without prejudice to his right to change his position on the basis of the Board's ultimate decision on remand.

Respectfully submitted,

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR PETITIONER (INTERVENOR)

United States Court of Appeals
for the District of Columbia Circuit

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case Nos. 23,295, 23,300

OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY,
Intervenor.

Case Nos. 23,750, 23,751

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR PETITIONER (INTERVENOR)

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Were the conversations, interviews, and discharges an effort to ease the tension caused by the anonymous letters, or because of Union activity, and thus, in violation of the Act?

2. Are Kansas Refined Helium plant Senior Operators "supervisors" within the meaning of the Act?

3. Should employee Garrett be required to testify?

4. Should Sims, Garrett and Johnson be denied reinstatement because of their own improper activities, regardless of the reason for the discharge?

5. Does the National Labor Relations Board have jurisdiction to rule on the dismissal of Senior Operator Rodgers who was "temporarily reinstated" under a Kansas Federal District Court injunction which was subsequently dismissed by the Tenth Circuit?

6. Was Rodgers' false statements to the National Labor Relations Board which caused unfounded civil and criminal contempt proceedings to be brought against Angle, together with Rodgers' other activities, proper grounds for dismissal, regardless of his supervisory or temporary reinstatement status?

7. Is the unit found by the Board an appropriate one for the purposes of collective bargaining?

8. Is there an adequate showing that a majority of the employees designated the Union as their representative?

9. Is a bargaining order against Angle proper?

10. Is it proper for the Board to render a decision in this matter, in light of prior allegations and conclusions of the Board in other connected actions against Angle?

11. Should the Circuit Court order a remedy considered and found inappropriate by the National Labor Relations Board?

PRIOR DISPOSITION IN THIS CIRCUIT

The pending cases have not been before this Court under the same or a similar title.

REFERENCES TO RULINGS

George A. Angle, d/b/a Kansas Refined Helium Company, Case Nos. 17-CA-3021 and 17-CA-3021-2, 176 NLRB No. 115 (June 25, 1969);

George A. Angle, d/b/a Kansas Refined Helium Company, Case No. 17-CA-3378, 176 NLRB No. 116 (June 25, 1969);

See also, Sacks v. Angle, U. S. Dist. Court for Kansas, Case No. W-3766, 65 LRRM 2098 (Kan. D. C., 1967), *rev'd.* in part, 382 F.2d 655 (10th Cir. 1967).

STATEMENT OF THE CASE

The proceedings herein in Cases 23,295 and 23,300 were instituted by the Oil, Chemical & Atomic Workers International Union, AFL-CIO (hereinafter referred to as the "Union"), pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 USC §§ 151, et seq., as amended, by 73 Stat. 519, hereinafter referred to as the "Act"), petitioning this Court for review of orders of the National Labor Relations Board, Respondent (hereinafter referred to as the "Board"), against the Intervenor in those cases, George A. Angle, d/b/a Kansas Refined Helium Company (hereinafter referred to as "Angle"), its officers, agents, successors and assigns. The proceedings herein in Cases 23,750 and 23,751 were instituted by Angle, petitioning the Court for review of the same orders of the Board. The proceedings resulting in these orders are

known on the records of the Board as Cases 17-CA-3021, 17-CA-3021-2, and 17-CA-3378. The orders of the Board and decisions in these cases find that Angle committed unfair labor practices in violation of the Act. Angle seeks a decree of this Court modifying or setting aside the orders of the Board.

A. Conversations, Interviews and Discharges at the Plant

Kansas Refined Helium Company is a sole proprietorship, owned by George A. Angle, located at Otis, Kansas, and engaged in the extraction and distribution of helium. Angle contracted for construction of the helium plant, which commenced actual operations in the spring of 1966.

Angle first became aware that a problem existed at the helium plant when he received an anonymous letter directed against the plant manager, Owens, on Monday, June 27, 1966. (Appendix hereinafter referred to as "A." 143; Respon. Ex. 9, A. 468-70).[1]

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1. The numerous records, Decisions and exhibits herein have been denoted as follows for reference in this Brief:

T. 1st, refers to the stenographic transcript of testimony before Trial Examiner Sidney D. Goldberg on January 18, 19 and 20, 1967, and in the reopened hearing on August 9 and 10, 1967, in Board Cases No. 17-CA-3021 and 17-CA-3021-2, numbered pages 1 through 859;

T. 2nd, refers to the stenographic transcript of testimony before Trial Examiner Sidney D. Goldberg in the reopened hearings on April 24, 1968, and September 10, 1968, in Cases 17-CA-3021 and 17-CA-3021-2, being numbered pages 1-123;

T. 3rd, refers to the stenographic transcript of testimony taken before Trial Examiner George L. Powell on January 23 and 24, 1968, in Case No. 17-CA-3378, being numbered pages 1-309;

R. T., refers to General Counsel's Exhibit No. 18, which is the transcript of the Representation Case Hearing conducted on August 9, 1966, in Case No. 17-RC-5126, containing pages 1-104;

TXD 1st, refers to the Preliminary Decision of Trial Examiner Goldberg, in 17-CA-3021 and 17-CA-3021-2, dated September 12, 1967;

A few days later, on or about July 1, 1966, Angle received both a Union request for recognition and a Representation Petition. (A. 145-46).

Subsequently, at a dinner party attended by Angle, his family and employees, one of the employees spoke out in jest concerning the relative performance of the maintenance personnel as opposed to the operating personnel, and Angle replied with some informal remarks. (A. 166-67). Following the dinner, a second anonymous letter appeared, directed this time at the employee who spoke out at the dinner, but more particularly against Angle himself. (Respon. Ex. 10-A, A. 471-72). Angle expressed his contempt by posting and sending to all the employees the second anonymous letter with his own comments. (Respon. Ex. 10-B, A. 473-74).

During the 30 days following the second anonymous letter, the Regional Director of the Seventeenth Region held a Representation Case Hearing and ruled that Senior Operators (which classification included two of the dischargees, Sims and Rodgers) were supervisors. (G.C. Ex. 2-B, A. 258-62).

Shortly after the Regional Director's Decision (August 25), the third anonymous letter was received, on or

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TXD 2nd, refers to the Supplemental Decision of Trial Examiner Goldberg, in 17-CA-3021 and 17-CA-3021-2, dated December 20, 1967;

TXD 3rd, refers to Trial Examiner Goldberg's Decision in 17-CA-3021 and 17-CA-3021-2, dated December 30, 1968;

TXD 4th, refers to Trial Examiner Powell's Decision in 17-CA-3378, dated July 2, 1968;

Exhibits in 17-CA-3021 and 17-CA-3021-2 are referred to as G.C. Ex. ..... and Respon. Ex. .....;

Exhibits in 17-CA-3378 are referred to as G.C. 2nd Ex. .....

about September 1, 1966. (Respon. Ex. 11, A. 475). *None of the letters mentioned the Union*; the real problem as shown by the letters was a disgruntled and perhaps dangerous individual or group within the plant.

At this point Angle knew there was something terribly wrong, and inasmuch as he had never interviewed the plant personnel, he decided to have a lengthy interview with them. (A. 147).

Angle readily admitted that in the course of each interview he usually asked whether or not the employees had signed a Union card—but he also asked them more. (A. 153). Angle felt the anonymous letters were the key to the problem, and he discussed these in detail. (A. 148-49). Angle asked the employees what was causing them to be dissatisfied. (A. 153). He asked them how the plant could better operate. (A. 160). During the course of the interviews, Angle concluded that plant workers Sims, Rodgers, Harris, Johnson, Bishop and Garrett were involved with the anonymous letters. (A. 151; 156-58).

Angle took rapid and positive action in light of the interviews. Angle discharged the six men involved in the Complaint in Case No. 17-CA-3021 and 3021-2 (Sims, Rodgers, Johnson, Garrett, Harris and Bishop), and obtained the resignation of the plant manager, Owens. (A. 159). Angle also instituted other changes, including the purchase of new equipment, promotion of some individuals, setting up a training program, and the hiring of other individuals. (A. 161).

At or about this time, in response to Objections filed by the Union in the Representation case, the Board ruled

that the question of supervisory status of the Senior Operators should be resolved by the challenged ballot method. (G.C. Ex. 2-E, A. 263). Before an election could be held, Unfair Labor Practice Charges were filed by the Union and the election was stayed as a result of these Charges. Amended Charges were later filed, alleging refusal to bargain, and an election was never conducted.

B. Injunction

A Petition for an injunction against Angle pursuant to Section 10(j) of the Act was filed by the Board with the United States District Court for the District of Kansas on December 20, 1966, requesting an injunction on the issues of 8(a)(1) (unlawful interrogation) and 8(a)(3) (unlawful discharges), but not on the issue of 8(a)(5) (refusal to bargain), stating, in effect, that injunctive relief was necessary *in order that an election could be held among the Angle employees.* (United States District Court for the District of Kansas, Case No. W-3766, reported in *Sacks* v. *Angle*, 65 LRRM 2098 (Kan. D. C., 1967)). On April 5, 1967, the District Court issued its order granting a temporary injunction.

C. Refusal to Bargain

A Union representative was assigned to the Kansas Refined Helium Company to seek representation by way of an election. (Respon. Ex. 8, A. 467). The Union representative passed out literature concerning an election (Respon. Ex. 2-A-F, A. 434-56), petitioned for an election (Respon. Ex. 4-A and B, A. 458-60), and wrote letters to the employees concerning the election. (Respon. Ex. 3, 6

and 7, A. 457; 463-66). Union membership application cards were also solicited. (Respon. Ex. 1, A. 433). The refusal to bargain Charge was not filed until November 1, 1966, as opposed to the filing of the original Charges on September 21 and 22, 1966. (A. 508). As late as October 21, 1966, the Union informed employees it was proceeding with the election. (Respon. Ex. 3, A. 457).

Employees who signed membership applications were told they were for an election. Employee Sloan was told the card was "To petition the union for an election for representation in the plant." (A. 85). The only thing employee Tittel can recall he was told about the card was that it was "For the purpose of maybe petitioning for an election for representation by the union." (A. 91). Employee Julian was told the card was "an inquiry as pertaining to the union." (A. 113). Employee Roberts, if allowed to testify, would have stated the card was simply for the purpose of bringing the Union in to talk to the employees and explain the Union's position and that there was no obligation by signing the card. (A. 114-15). Employee Durbin, if allowed to testify, would have testified that it was common knowledge among the employees at the plant that the purpose of the cards was to bring a Union agent in to tell the employees what a Union could do for the employees. (A. 116). Employee Weinman was told that the card didn't obligate him in any way as far as the Union was concerned. (A. 120). Employee Pickerill was told that "we would get a man out here to talk to us and we can weigh both sides if we would like it or if we don't." (A. 118). Employee Ham was told "the card would give me a right to vote in the union election." (A. 110).

It is also clear from the testimony that Senior Operator Sims, whom the Regional Director found to be a supervisor, solicited many of the Union cards. (A. 110; 113; 114; 116; 118).

Based on these cards, the Board found Union designation by a majority of Angle's employees and a refusal to bargain by Angle.

The bargaining unit found to be appropriate by the Board is limited to Angle's helium plant. (A. 576). It is Angle's position, however, that such a unit limited only to the plant is inappropriate based on the substantial evidence presented to the Board, showing an integration of the plant with other of Angle's operations, which include Frontier Oil (explores for oil and gas), Red Tiger Drilling Company (drills oil wells), Great Plains Drilling Company (completes oil and gas wells), Red Tiger Trucking Company (moves drilling rigs), Red Tiger Cat Company (levels locations and digs pits), Red Tiger Grader Company (builds and grades roads around the oil leases), Hayes Tank Service (hauls water from the producing leases into drilling rigs), and Kansas Refined Helium Company (the most recent addition to the trade name operations, which gathers and refines gas from producing wells). (A. 358-62). The management of all the Angle operations is centralized (A. 357), and there is employee interchange in the various operations. (A. 363; 373-74; 190-93; 200-02; 203-04; 221-22; Respon. Ex. 26, 27 and 28, A. 487-89). Based on the evidence as a whole, Angle submits a bargaining unit limited to the helium plant is inappropriate.

D. Employee Garrett's Testimony

Thomas Garrett was called as a witness by the Board in the 10(j) injunction proceeding against Angle in January, 1967, but Garrett did not testify in the companion Board case which was heard the following week. Shortly after the close of the unfair labor practice Charge, Garrett came to the office of Respondent's attorney, and in the presence of attorneys for Angle and for the Union, indicated testimony given in the 10(j) proceeding had been untrue. (G.C. Ex. 17-A, A. 307-19). On the basis of Garrett's statements, Angle sought, unsuccessfully, to reopen the record in 17-CA-3021 and 17-CA-3021-2. (GC. Ex. 17-A, A. 307-19).

In the Fall of 1967, the Board prosecuted unfounded civil and criminal contempt Charges against Angle. Garrett was again called as a witness on behalf of the Board. Angle was exonerated from civil and criminal contempt charges. In early 1968, Angle's request to open the record and take the testimony of Garrett was upheld by the Board and the matter was remanded to the Trial Examiner "for the purpose of taking Garrett's testimony, as it bears on the substantive issues and issues of credibility in the case . . . ." (Board Order dated 1-30-68). When called to testify, Garrett appeared with his attorney, who requested and was granted a continuance until psychiatric examination could be made to determine whether Garrett was capable of testifying. (A. 230-32). After a subsequent hearing, the Trial Examiner refused to take Garrett's testimony as ordered by the Board, but instead, concluded that Garrett was not physically able to testify. (A. 601-

16). It is Angle's position that it was error for Garrett's testimony not to be taken.

E. Barring of Reinstatement of Discharged Employees

It is Angle's position that even assuming the discharges of Sims, Garrett and Johnson were in violation of the Act, which Angle denies, their reinstatement is barred because of the following activities:

1. **Sims**—There is compelling evidence that Sims was the author of some or all of the three anonymous letters received by Angle. (G.C. Ex. 17-C, Respondent's Supplemental Motion to Re-Open Record, dated March 8, 1967, A. 320-38; A. 96-98). Employee Wakulich testified that Sims took five or six sheets of Company information concerning the dismissal of employees Johnson, Sloan and Garrett, and thermofax copies were made and shown to employees. (A. 98). Wakulich testified he had seen Sims use a key to open plant manager Owens' desk. (A. 98). Wakulich revealed how Sims told he could overhear some of Angle's conversations in the latrine. (A. 101). Sims also took some papers that were in one of Angle's briefcases. (A. 99).

2. **Garrett**—Garrett failed to appear for the Board trial and Garrett stated that after the Federal Court hearing, he "wandered around in kind of a daze for two days." (G.C. Ex. 17-A, A. 307-19). In his post-trial interview with attorneys for Angle and Union, Garrett spoke of "perjury" and a "direct lie." (G.C. Ex. 17-A, A. 307-19). At the hearing on September 10, 1968, Garrett admitted to Dr. Adams that there was great question concerning the truth of his testimony and the testimony of other employ-

ees. (A. 238-39; 241-42). The Trial Examiner also held that Garrett is incapable of testifying. (A. 601-16).

3. **Johnson**—Wakulich testified how Johnson had reported his inability to overhear Company management when Johnson climbed in the rafters above private offices. (A. 100). The action is not denied by Johnson.

F. Supervisory Status of Senior Operators

The Regional Director of the Seventeenth Region heard evidence and found that Senior Operators were supervisors in Case No. 17-RC-5126. (G.C. Ex. 2-B, A. 258-62). On appeal by the Union, the Board did not set aside the Regional Director's Decision, but left the matter open to determination by the challenged vote procedure. (G.C. Ex. 2-E, A. 263).

Angle paid the Senior Operators at the plant from 80-85 cents more per hour than their subordinates. (G.C. Ex. 12, A. 297-304). Both Senior and Junior Operators receive no difference in training, and they all simultaneously attended the same course when the plant was being opened. (A. 78).

One of the Senior Operators who was discharged, Rodgers, testified that it was his obligation and responsibility to direct men in what they do while he works with them. (A. 411-12). Rodgers testified that if a marginal question or problem arises, it is up to him as Senior Operator to use the independent judgment to solve it. (A. 415).

The plant engineer and manager, Tyler, told the Senior Operators that if an incident involving a discharge

of an employee arose, Tyler would do the actual firing as a practical matter, but he made it clear that the Senior Operator had authority to effectively recommend discipline. (A. 134-35).

Directives issued by Angle showed the following:

(a) "The senior operator will be informed and supervise the personnel on his shift." (Respon. Ex. 20, A. 483).

(b) The Senior Operator is "responsible for his shift" and in the near future "will have the full responsibility of plant operation during his shift." (Respon. Ex. 19, A. 482-83, dated Jan. 5, 1966).

(c) "Jim Ham has been promoted to Senior Operator to run the fourth shift." (Respon. Ex. 16, A. 481).

(d) "Each supervisor will approve employees time cards. . . Senior Operators will approve employees under their supervision." (Respon. Ex. 18, A. 482).

(e) "All Senior Operators" along with two other management personnel, Tyler and Stiff, were given a directive which related to "Supervisor's Investigation Reports." (Respon. Ex. 21, A. 484).

(f) Another directive states that "The Senior Operator shall follow up these instructions and see that his employees take care of this." (Respon. Ex. 22, A. 485).

(g) Another directive gives "All Senior Operators of KRH" authority to call out instrument men when needed. (Respon. Ex. 23, A. 486).

It is Angle's position that the above and other evidence make it clear that the Senior Operators are supervisors, contrary to the finding of the Board.

G. Reinstatement and Discharge of Rodgers

In response to a 10(j) injunction petition filed in December by the Board, the United States District Court for the District of Kansas, Case No. W-3766, issued an Injunction Order in April, 1967. Insofar as reinstatement was concerned, the order stated as follows:

> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT, respondent reinstate employees Arel Rodgers, Russell Sims, Dwayne Johnson, Russell Bishop, Thomas Garrett and John Harris to their former positions pending the final determination of this matter by the Board;"

Following extensive correspondence, Angle offered such temporary reinstatement to Rodgers on July 17, 1967. (G.C. Ex. 2nd No. 2, A. 720). Rodgers accepted such temporary reinstatement on July 19, 1967. (A. 632).

On July 20, the Board caused its agents and attorneys to file an unfounded civil and criminal contempt action against Angle, alleging under oath, among other allegations, that Angle failed to comply with the Court's Order "by failing to reinstate Arel Rodgers, Thomas Garrett, and Russell Bishop." (Kansas District Court Case No. W-3766). During the course of the contempt proceedings, it was obvious that the unfounded contempt action was based on information gained from Rodgers. (A. 678).

On August 28, 1967, United States Court of Appeals for the Tenth Circuit affirmed the order of the Kansas District Court, except for the following modifications:

(a) The Court's reinstatement order was modified to *exclude* the Senior Operators, Sims and Rodgers;

(b) Petitioner was required to tender reasonable travel expenses only to the remaining four employees who would indicate they accepted temporary reinstatement. (*Sacks* v. *Angle*, 382 F.2d 655 (10th Cir. 1967)).

On September 13, 14 and 15, 1967, the United States District Court for the District of Kansas heard the evidence in the unfounded civil and criminal contempt charge brought by the Board against Angle. At the close of the case put on by the attorneys for the Board, the Court ruled in favor of Angle without evidence being required from Angle.

Immediately following the acquittal of Angle, there occurred a conversation between counsel for Angle, Mr. Robert Martin, and counsel for the Board, Mr. Mestal. The counsel for the Board expressed concern about the belief on the part of attorneys for Angle that the Board attorneys had knowledge of the falsity or inaccuracy, or both, of statements made by Rodgers to the attorneys for the Board. The Board attorney assured Angle's attorney that this was not the truth, that they had been completely misled by Mr. Rodgers as to the retraining program and how he was being treated at the Kansas Refined Helium plant, and they were surprised by some of the testimony which Rodgers and others gave at the contempt hearing. The attorney for the Board, Angle's attorney was assured, had been in good faith and had not had knowledge of the fact that the allegations made to them in the investigatory statements were not true. (A. 708).

The day after the contempt trial September 16, 1967, Rodgers went to the plant to get his check and to talk to

the men on duty about a recommended order issued by Trial Examiner Goldberg. (A. 638).

Under the Circuit Court of Appeals' Rules, the Board and Angle had until Monday, September 18, 1967, to file Motions for rehearing. No such motions were filed and the Circuit Court's order setting aside Rodgers' right to temporary reinstatement became final on September 19, 1967. The plant was having severe problems on that date. (A. 696). Toward the close of that day, Rodgers approached plant manager Tyler on Company time and insisted that Trial Examiner Goldberg's recommended order should be posted. (A. 697-99). Tyler had been under instructions not to reprimand or take other action concerning Rodgers without first discussing the matter with Company counsel. (A. 704-05). Following Rodgers' demands, Tyler called Wichita and Rodgers was subsequently given a letter of suspension when he appeared at the plant the following morning. (G.C. 2nd Ex. 4, A. 721-22). On October 2, Rodgers was formally dismissed. (G.C. 2nd Ex. 5, A. 722-26).

The Board found that the conversations and interviews by Angle violated the Act, that the discharge of the six plant personnel violated the Act, and that the discharge of Rodgers after his reinstatement violated the Act. The Board refused to order certain "unique" remedies sought by the Union.

ARGUMENT

I. The Conversations, Interviews and Discharges Were an Effort to Ease the Tension Caused by the Anonymous Letters

The sequence of events leading up to the interviews and discharges have been summarized. Some facts are certain:

1. The plant was in a turmoil by September.

2. Angle had a series of interviews with every employee in mid-September, each of which lasted up to three hours and covered a wide range of subjects—including self-respect, tension, discontent, anonymous letters, unions, and plant improvement.

3. Following these interviews, Angle made a number of drastic changes, including discharging six persons, obtaining the plant manager's resignation, promoting and raising others, expanding his work force, and adding additional buildings and equipment.

4. After this activity in September, the plant operation smoothed out.

Angle was not learned in the law. Orphaned at five, earning his own way at 13, fighting in both World War II and the Korean War, and building a company from one employee in 1954 to 97 employees in 1966 (G.C. Ex. 11, A. 268-96), *Angle did understand people*. He did understand that one demented personality could infect a group which, in turn, could destroy the morale and ability of the whole organization. He did understand that any organization could be irreparably damaged by one person at-

tempting to destroy others to satisfy his own malice or ambitions. He further understood that if the man or men involved were *supervisory*, it could be fatal to the organization.

This is the stage as it was set when Angle began his interviews. If Angle merely wanted to find out who was pro-Union and fire them—why did he spend up to three hours in each interview? *Angle* readily admitted that in the course of each interview he usually asked whether or not the employee had signed a Union card—but he also asked *more—much more*. Since he felt the anonymous letters were the key to the problem, he discussed these in detail, as Angle later related:

> "I said to each one, the first letter about Buddy Owens, I was sitting right beside them and would ask them to read it. Then I would watch them carefully as they read it for any visible sign that they had ever read it before, or for their reaction. Then I had them read the second letter, which had been mailed to each and every one, and had been placed on the bulletin board with my company letter. Then I showed them the third letter. I would discuss the letter with them. One of the things I was trying to desperately find out was who this group was, and I would say, Wouldn't you consider anyone that wrote a letter like that to have an unbalanced mind, to see if I would get a reaction of any kind." (A. 149).

He asked the employees what was causing them to be discontented. He asked how the plant could operate better. His purpose in having days full of interviews was *not to learn about the Union—he already knew!* Instead, he was forming judgments about each individual employee.

It is easy to say Angle was unfair, or hasty, or overly severe in his remedies. Yet Angle had the full responsibility for the success or failure of the *total* venture. The purpose of his actions was not to get rid of *all those for the Union* (as contended by some of the dischargees). Otherwise, why were just *those six who complained* selected and not others? How does he get rid of all the Union supporters by retaining and raising the other Union advocates—for example, Mr. Lynch, a longtime Union member and ex-steward? (A. 158). Most significant, why did Angle fire two "pro-Union" Senior Operators but retain and promote another "pro-Union" Senior Operator (who had been a Union member for 10 years) to assistant manager of operations? (A. 158-59). Harms made no secret of his Union feelings. (A. 160).

The answer, of course, lies in the *non-Union* information Angle sought and obtained in his interview. Harms was a man with *constructive*, not negative and destructive, ideas on operation. (A. 159-60). Angle respected those abilities and *proved* his testimony that the *Union was not the reason for his action by promoting, not firing, this Union adherent!*

By hindsight, how accurate was Angle in his analysis of events?

1. Angle had taken his microscope and decided the first and second anonymous letters were written at the plant. (A. 149). The evidence of expert Hugh Herring shows this to be true. (A. 167).

2. Angle believed these two letters were written on the morning or evening shift when only three people were present. (A. 149; 162). Wakulich testified he heard the typewriter "ticking away" after

Sims went up front and then Sims brought him (Wakulich) up to see the anonymous letter Sims had "found." (A. 97).

3. Angle believed he had rid the plant of the authors of the anonymous letters. (A. 162-63; 164; 156-58). The discussion concerning Sims (*infra*) supports this conclusion.

4. Angle wanted to relieve the tension. Since the discharges, promotions, etc., the plant has operated smoothly without further incident or complaint.

Perhaps Angle was unjust in his criticisms and the six men whom he fired were not the ones responsible for the letters and tension—but Angle believed they were—*and it was upon this belief that he made his decision to discharge them and take the other action which he took.* He characterized this belief not only by discharging some, but by raising and promoting others. His other actions, such as the promotion of Senior Operators Harms, an open, avowed Union advocate, indicates that the Union matter *was* secondary to Angle, and the matter of saving the plant and doing whatever was necessary to rid it of the problems which threatened to destroy it, was paramount.

In view of these facts, Angle submits the substantial evidence shows that the interviews and discharges were not in violation of the Act.

II. The Senior Operators at the Kansas Refined Helium Plant Are Supervisors Within the Meaning of the Act

One of the principal issues in this matter is the supervisory or non-supervisory status of Senior Operators. Angle submits that the Board has been clearly incorrect in its decision on this issue—both in its failure to credit

the substantial evidence showing Senior Operators are supervisors, and in its application and interpretation of the applicable law.

It should first be noted that the decision of the Board directly conflicts with a prior determination of the Regional Director in the companion Representation Case, No. 17-RC-5126, in which the Senior Operators *were held to be supervisory personnel.* (G.C. Ex. 2-B, A. 256-62).

In reaching this Decision, the Regional Director had before him the testimony of the plant manager and also the testimony of one of the Union leaders, Mr. Arel Rodgers, a Senior Operator. The Regional Director did *not* have the written Company directives setting forth the responsibilities and authority of the Senior Operators. (Respon. Exs. 16-23, A. 481-86). Yet, even without this additional buttressing evidence, the Regional Director made the following finding:

> "The *senior operators* will be excluded as supervisors within the meaning of the Act. The record indicates that the plant operates on an around-the-clock basis, utilizing three shifts, from 8:00 a. m. to 4:00 p. m., 4:00 p. m. to midnight, and midnight to 8:00 a. m. Each shift is staffed by one senior operator and two junior or assistant operators. The maintenance department works from 7:00 a. m. to 3:30 p. m., instrument men from 8:00 a. m. to 4:30 p. m., and the one plant clerical from 8:00 a. m. to 5:00 p. m. *The senior operators receive at least 85 cents more per hour than the junior operators and have been told by the Employer that they are part of management. They have authority to shut down operations when this is indicated, and they have done so.* While the junior op-

> operators are apparently well qualified to perform their duties, they may perform certain operations only when so directed by the senior operator on duty. Moreover, *during the second and third shifts, the senior operators work without anybody possessing greater authority being present.* In view of the foregoing and the record in its entirety, including the Employer's brief, *I conclude and find that the senior operators responsibly direct the junior operators working with them, and that in this connection they are required to, and do, use independent judgment.*" (G. C. Ex. 2-B, A. 261) [Emphasis added].

In contrast, the Board has now concluded that the Senior Operators are *not* supervisory. The faulty cornerstones upon which the Board has built its case are as follows:

1. The Board erroneously concludes that "evidence of supervisory powers *exercised*—or *not exercised*—[is] *far more persuasive* than self-serving testimony concerning their *mere conferral*" (A. 529), notwithstanding repeated court determinations that it is the "*existence*," not the "*exercise*," of authority which renders persons supervisors under the Act.

2. The Board erroneously concludes that the Company's decision that Senior Operators were "supervisory" has only come about since the hearing in the Representation case when the issue became critical to the instant labor difficulties (A. 518), notwithstanding the grant of authority was actually conferred several months before these labor difficulties, through conversations and Angle's published notices.

3. The Board erroneously concludes that the functions of the Junior and Senior Operators are substantially the same (A. 519-21); notwithstanding the authority and action by the Senior Operators in directing and controlling the Junior Operators. (A. 65; 54-55; 68; 132).

4. The Board erroneously concludes that the fact that supervisory personnel other than Senior Operators are absent 120-140 hours per week is not "dispositive of this issue" (A. 521); notwithstanding the plant operates seven days a week, 24 hours a day, and on-the-spot decisions must be and are made by the Senior Operators. (A. 413; 108-09; 133-34).

5. The Board erroneously concludes that since Senior Operators could not *discharge* Junior Operators, they had no authority to discipline or effectively to *recommend* discharge (A. 522-23); notwithstanding the Senior Operators were actually advised that they would be "backed up" by top management. (A. 134-35).

6. The Board erroneously concludes that Senior Operators had no authority to make effective recommendations for wage increases (A. 522-23); notwithstanding such wage recommendations have been made.

7. The Board erroneously concludes that the normal wage differential between Junior and Senior Operators (of 45 to 85 cents per hour) did not "*necessarily* indicate that there was responsibility and supervisory authority" (A. 524-25); notwithstanding both Junior and Senior Operators took the same training and the only reason for additional payment would be additional responsibility rather than skill.

8. The Board erroneously concludes that the "function of timecard approval, without more, did not *necessarily* convert the Senior Operators into Supervisors" (A. 525); notwithstanding such authority was an obvious management function conferred upon Senior Operators in writing in February, 1966, prior to the Union campaign which began in May or June, 1966. (Respon. Ex. 18, A. 482).

9. The Board erroneously concludes that the authority conferred upon Senior Operators by management through written documents published and posted several months before the instant labor difficulties are "not conclusive" and are "conclusionary" (A. 525-27); notwithstanding that it is only through such prior grant of authority or ratification of later actions that supervisory authority could be shown in any case.

While not cited by the Board, a prior determination has been made in an almost identical factual situation under the case of *Ohio Power Co.* v. *NLRB*, 176 F.2d 385 (6th Cir. 1949).

(a) *Automation*—For example, in the instant case, the Examiner alludes to the highly automated condition of Respondent's helium plant. (A. 524). By comparison, the Court describes the plant in the *Ohio Power Co.* case as the most highly automated plant in the industry. (176 F.2d at 386).

(b) *Control Room*—In the instant case, the Board defines the control board from which the Senior Operator carries out his duties:

> "The post of duty of the senior operator is at a large bank of indicators called 'the board,' in the main control room in the principal building;" (A. 520).

The following statement is contained in the *Ohio Power Co.* case:

> "At the Tidd Plant the controls for the boilers, turbines, pumps and other equipment are concentrated in one room, and the control operator handles the entire operations of the plant from this room where he spends 95% of his time." (176 F.2d at 386).

(c) *Number and continuity of Control Operators*—Four control operators work at the instant plant in shifts which relieve each other in order that the plant can operate 24 hours per day. The *Ohio Power Co.* case makes the following statement:

> "There are four control operators who relieve each other at this plant, one being on duty at every moment of the day." (176 F.2d at 386).

(d) *Two Assistant Operators*—The Senior Operator has either two or three Junior Operators assisting him in the instant case. (A. 520). The *Ohio Power Co.* case states:

> "The control operator is assisted by the assistant control operator and the auxiliary equipment operator." (176 F.2d at 386).

(e) *Duties of Assistant Operators*—The Junior Operators in the instant case assist the Senior Operator, receiving instructions from him, and spend the balance of their time throughout the plant carrying out necessary instructions and operations. (A. 519-20). The *Ohio Power Co.* case similarly defines the work of the two assistants to the control operator in that case. (176 F.2d at 386).

(f) *Narrow Issue*—The Board in the instant case states that the area of inquiry is somewhat contracted by

Angle's frank statement that no contention is made that the Senior Operators did actually suspend, layoff, recall, promote, transfer or discharge other employees, but that the question is whether or not the Senior Operators had the authority *to adjust grievances*, to *assign, responsibly direct or effectively recommend, reward or transfer their subordinates.* (A. 518-19).

An ever further contracted issue is presented in the *Ohio Power Co.* case, as follows:

> "It is not contended that the control operators have authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or to adjust their grievances or effectively to recommend such action. The *narrow question presented is whether under this record the control operators responsibly direct other employees,* the exercise of their authority being not of a merely routine or clerical nature, but requiring the use of independent judgment." (176 F.2d at 387) [Emphasis added].

The Court in the *Ohio Power Co.* case, faced with almost identical facts as to function, but with much less authority than was spelled out for Senior Operators through written memoranda in the instant case, *nonetheless determined that the control operators were supervisory.* In making this decision, the Court took the following logical steps:

1. The supervisory definition contained in the Act "is to be interpreted in the disjunctive . . . and *the possession of any one of the authorities listed in Section 2(11)*

places the employee invested with this authority in the supervisory class." (176 F.2d at 387) [Emphasis added].

2. The Court then made the following conclusive statement which has been adopted uniformly by later cases:

> "Section 2(11) covers any individual '*having authority * * * responsibly to direct * * *.*' It *does not require the exercise of the power* described for all or any definite part of the employee's time. It is the *existence* of the power which determines the classification." (176 F.2d at 388) [Emphasis added].

Contrast these judicial declarations with the Board's holding:

> "Moreover, where the facts concerning supervisory status are in dispute, as they are here, I regard evidence of supervisory powers *exercised*—or *not exercised*—as *far more persuasive* than self-serving testimony concerning their *mere conferral.*" (A. 529) [Emphasis added].

Angle submits this is the heart of the Board's error. It has attempted to negate authority given by the Employer (through its memoranda and witnesses) on the grounds that such notices were mere "representations" and "conclusionary." In fact, the Board degrades the establishment of such authority by referring to it as a *"mere conferral"* of power and makes it clear that they rely on the *exercise* or *non-exercise* "as far more persuasive" than the *existence* of such power. The Board's logic and law are both in error.

A witness in the *Ohio Power* Co. case testified as follows:

"'Q. And it is necessary for him to make decisions on the spot? A. Particularly when there are *emergencies*, but in a routine way as to various adjustments.
'Q. But he has to do those things *on his own initiative*?
A. He makes those decisions on his own initiative.
'Q. And the decisions which he makes are such as to control the operation of the entire unit? A. That is correct.
'Q. And thereby they control the entire output of the plant as it is now constituted? A. That is correct.'" (176 F.2d at 386) [Emphasis added].

The testimony of the Union witness, Rodgers, in the Representation case (which the parties stipulated at the time of the hearing on the reopened record would be before the Board in the instant case) shows the following statements:

"Q. It is your responsibility, is it not, however you may think of it in your own mind, to direct and control the people who work for you, whether or not you think of it as management, you have the responsibility to direct and control the people, don't you?
A. Pertaining to the job on my shift, I have the direction with the exception of major things, and *on occasion have made decisions because of time or necessity*.
Q. All right. You have an extremely valuable group of equipment under your control and you must make these decisions under certain circumstances, is that right?
A. Yes.
Q. And if the facts warrant it, *you have to take the action without the opportunity to check with higher authority, is that correct*?
A. *There has been occasions when we have had to do this.*

Q. The people underneath you, *you have the obligation and responsibility to direct them in what they do while you are there with them, is that not true?*
A. *Yes.*" (A. 412) [Emphasis added].

. . .

"Q. So he looks to you to tell him what to do, whether to shut it down or not?
A. If it is a marginal thing, his first step would be to ask me.
Q. You are the one to use the discretion; not him?
A. Unless it would be a very dangerous situation.
Q. *If it is marginal, you exercise your independent judgment?*
A. *Yes.*
Q. You tell him what to do in those cases?
A. In those cases." (A. 415) [Emphasis added].

Based upon the evidence, the *Ohio Power Co.* Court found:

"Other types of emergencies have occurred in which the control operators have *requisitioned men from the maintenance groups* to keep the plant in operation. The fact that an *emergency* is not always in existence is immaterial, as also *is the fact that the shift operating engineer is superior to the control operator.* It is undisputed that in the absence of the shift operating engineer the responsibility rests upon the control operator to direct other employees in the handling of emergencies; that an emergency may require split second action, and that the control operator exercises this authority not as a matter of routine, *but by the use of independent judgment.*" (176 F.2d at 388) [Emphasis added].

Thus it can be seen that the facts, the question and answers of witnesses, the operation of the plant and the func-

tion of the operators in the instant case are strikingly similar to the *Ohio Power Co.* case. One almost believes that the testimony and findings in either case could be neatly interchanged (with the exception of the additional memoranda and other facts showing supervisory authority in the instant case), without disturbing the proper result. Yet the conclusion reached is opposite.

We forcefully submit that the Board's failure to follow this precedent and find the instant Senior Operators are supervisory personnel is contrary to the law and is not supported by substantial evidence on the record as a whole.

The Decision of the *Ohio Power Co.* case has been repeatedly upheld by the Courts and the Courts have repeatedly attacked the rationale which claims that it is the *exercise*, rather than the *existence*, of authority which is important. For example, the Third Circuit, in a recent case, *West Penn Power Co.* v. *NLRB*, 337 F.2d 993 (3d Cir. 1964), states as follows:

> "It has been settled by many court decisions, an employee must be defined as a supervisor if he exercises any *one* of the powers set forth in §2(11) of the Act. . . . This section *does not require the powers described be exercised during any definite part* of the employee's time. *It is the existence of the power which determines the classification* of whether an individual is an employee or a supervisor. . . . It was said by this Court in N.L.R.B. v. Beaver Meadow Creamery, Inc., 3 Cir., 215 F.2d 247, though it affirmed the Board's action under the particular facts obtaining there that the individual was not a supervisor, that 'We quite agree that Section 2(11) must be read disjunctively, that the possession of any one of the Section 2(11)

> powers will make one a supervisor and that *it is the fact of possession of the power regardless of its nonexercise that is determinative.'"* (337 F.2d at 996) [Emphasis added].

Finally, the Court disposed of another case relied upon, in an attempt to support the erroneous doctrine of *exercise* vs. *existence,* and reached the following conclusion:

> "Another case relied on, N.L.R.B. v. Leland Gifford Co., supra, gives the Board no support for its position, since, 200 F.2d at 625, it is held, 'On the other hand, we think the statute does mean that once an individual has actually been clothed with genuine power to perform a supervisory function, he thereupon becomes a "supervisor" even before an opportunity arises to exercise his power, and even though he may not often find it necessary to exert the power conferred. That is to say, one clothed with real power to discipline other employees, for instance, would be *ipso facto* a "supervisor," *even though in a particular instance months, or perhaps in rare cases even years, might pass before any occasion ever arose calling for an exercise of the power.*'" (337 F.2d at 997) [Emphasis added].

Based upon the law, we earnestly submit that the cardinal basis of the Board's Decision, i.e., that the *exercise* of authority "is far more persuasive" than the *existence* of authority, is in error.

In addition to the Board's improper interpretation of the law, we submit also that it made erroneous findings and conclusions as to the facts, as set forth in items 2-9 above.

Based upon the testimony and exhibits, it is clear that supervisory authority existed. As noted above, the Board actually bases its Decision upon the premise that *exercise* of authority is "far more persuasive" than *existence* of such authority. Even under this erroneous interpretation of the law, the facts—when welded together rather than being splintered apart and denied life to each part as done by the Board—show a clear case of supervisory authority analogous to that of the control operators in the "bay horse" case of *Ohio Power Co., supra. But when the erroneous interpretation of the law is stricken, it shows supervisory authority not only by the exercise of such authority, but also by the clear existence of such authority through management directives.*

The cases relied on by the Board show facts which are *not* analogous to the instant case and they are *not* valid precedent. The Board looked to several factors in making its Decision in the cases on which it relies (*NLRB* v. *Southern Bleachery & Print Works,* 257 F.2d 235 (4th Cir. 1948); *United States Gypsum Company,* 116 NLRB 656 (1956)). An analysis of these factors in the instant case show clearly that they do not apply here. While the description of the functional work performed as working employees has some similarities, the other factors (indicating authority) are completely different. For example, the wage differential between the Senior Operator and his subordinates is far greater (45 to 85 cents per hour) than the differential shown in the cited cases (15 to 25 cents per hour). By contrast, their skill shows no basis for such a differential. The Senior Operators and Junior Opera-

tors were taken from the same group of men, given a short training course together, and then simply assigned as Junior or Senior Operators. Only two of the men had any prior experience in a helium plant and certainly none of them had any apprenticeship or long years of training to qualify them as "skilled craftsmen" analogous to "refiner engineer" or "printer" in the *U. S. Gypsum* or *Southern Bleachery* cases. In addition, none of the cases cited were ones which operated 24 hours per day, seven days a week with only a "refiner engineer" or "printer" in charge of the entire operation for most of the second and third shifts and weekends, as was the case at Angle's plant. (A. 521). In short, the basis for denying supervisory authority in these cases is not present in the instant case. Instead, we have newly-hired personnel placed in positions of authority, paid much higher rates than their subordinates because of this authority and responsibility, and then issued written memoranda and verbal instructions concerning their supervisory authority and obligations. No such authority was granted or spelled out in the *U. S. Gypsum* or *Southern Bleachery* cases. Instead, the Board was faced there with the obligation of determining on the basis of the *exercise* of certain duties whether or not authority actually *existed*. In view of their position as skilled craftsmen and lack of express authority, the Board found no such supervisory authority did exist. Such a determination would be inappropriate in the instant case in view of the express conferral of authority by the Company and the lack of a skilled craftsman position by the Senior Operators.

Based on the facts and evidence as presented to the Board, it is clear that there is no substantial evidence on the record as a whole to support the Board's finding that Senior Operators are supervisors, and that the Board's findings are contrary to law. Angle earnestly submits that such finding by the Board be overruled, and that the Senior Operators properly be held to be supervisory personnel.

III. Employee Garrett Should Be Required to Testify

The Board had the opportunity to clear up "lies" and "perjury" referred to by Garrett, but refused to do so because Garrett was said to be "physically unable" to testify. (A. 601). Angle submits this conclusion is based on a classic misconstruction of the evidence. The Board concludes that both doctors involved agree that if Garrett testified it is *probable* an "episode" would occur. (A. 611-12). After making such a conclusion, the Board shows no concern for the question of truthfulness of the testimony at the hearings involved.

The Board's position is erroneous. First, it is clear from the evidence that if Garrett testified, his answers would be reliable—*both doctors involved agreed to this.* (A. 243; 247). The Board makes no finding as to the reliability of Garrett's testimony.

Second, *the Board misconstrues the testimony of both doctors.* Doctor Kurth simply stated it was a "possibility" that adverse effects might occur from the testimony. (A. 247-48). Even Doctor Adams' testimony is couched in terms of the possibility of an episode being great enough that Garrett should not testify. (A. 239-40). The sub-

stantial evidence on the record as a whole shows that both doctors report a "possibility," and *not* a "probability," that Garrett might suffer a reverse by having testified. Since a "possibility" is involved, other factors should be looked to.

Garrett testified against Angle in September, 1967, when the Board was attempting to convict Angle of unfounded civil and criminal contempt actions. No trauma or psychotic episodes occurred. Dr. Adams admitted he did not know this and also admitted that this might make a difference in his judgment. (A. 243).

Denying Garrett's testimony renders the entire record in this case questionable. There are grave matters of truth involved in Garrett's testimony and it is clear that someone is not telling the truth. Dr. Adams focuses this problem when he states that Garrett's reaction:

> ". . . was because he had been involved in a situation where he has to testify and *maybe he was not telling the truth or he had not told the truth or he was hurting people* and he had a great concern about this and this was the nature of the precipitating events that caused this reaction at this particular time to occur." (A. 238-39) [Emphasis added].

Dr. Adams makes it clear that Garrett had told him that if called to testify, some of the testimony that he would be required to give would *contradict* others at the plant who had testified. (A. 241-42). Garrett's statements made in January, 1967, to the attorneys for Angle and the Union further emphasize the problem of untruths appearing in the record. (G.C. Ex. 17-A, A. 307-19).

It apparently is not a question of whether or not Garrett testifies that bothers Garrett - or the Board. *Instead, it is a question of what Garrett is asked and whether or not his testimony is likely to reflect adversely on Angle or on Garrett!*

Garrett did testify against Angle in the 10(j) injunction hearing, and again, at the request of the General Counsel, on behalf of the Board in the unfounded civil and criminal contempt action. At the time of the contempt hearing in September, all parties knew of the episode in January, 1967, when Garrett had bolted following the Federal Court injunction hearing. Yet no attempt was made by the Board to stop Garrett from testifying because of his health. In other words, both the Board and Garrett were perfectly willing for Garrett to testify—without any fear of psychotic results—as long as the testimony was to convict Angle—but suggest any attempt by Angle to probe into the truth or falsity might be detrimental to Garrett.

We suggest that such one sided position cannot be maintained by the Board. It is prejudicial that they now deny Angle the same right to call this very same witness in order to defend himself.

Angle submits that considering the above, it was error for the Board to refuse to take the testimony of Garrett.

IV. Sims, Garrett and Johnson Should Be Denied Reinstatement Because of Their Own Improper Activities, Regardless of the Reason for Their Discharge

The Board has repeatedly held that it will bar reinstatement for improper conduct on the part of employees

regardless of the reason they may have been discharged. In the landmark United States Supreme Court case in which the power to reinstate was first judicially declared (*Phelps Dodge Corp.* v. *Labor Board*, 313 U.S. 177 (1941)), the Court recognized that the Board's power of reinstatement was discretionary.

This same line of authority has been followed in a much more recent case. (*Uniform Rental Service, Inc.*, 161 NLRB No. 15 (1966)). This case states:

> "Shortly, before her discharge, but unknown to Respondent until afterward, Bartlett, without authority, entered Plant Manager Potter's untended office and removed a letter from his desk. The letter was one to the employees concerning the Union, and Bartlett showed it to some of them before its release by Potter. It is unimportant we think that the letter was in fact later distributed to the employees. *The question is simply whether or not an employee who improperly enters her employer's private office and pilfers a letter has forfeited her rights to backpay and reinstatement in the circumstances of this case. We think she has.*" [Emphasis added].

A similar issue was presented to the Board in the instant case concerning the activities of Sims in removing Angle's private papers from his briefcase. However, the Board refuses to meet this decision and make a decision as to the truth or falsity of Sims' testimony. (A. 551-52). We urge that such failure is error since the Board has indicated that an employee's actions in pilfering his employer's papers (of which Sims was apparently twice guilty—once in going into the Company offices and "finding" the second anonymous letter, and a second time by

surreptitiously removing papers from Angle's briefcase) bar reinstatement.

But there is an even much more far-reaching issue at stake here than the pilfering of papers and unwarranted invasion of the Company desks and briefcases. *This is the issue of truth under oath.* Sims testified that he did not write any of the anonymous letters. There is strong evidence to the contrary. In fact, the Board inadvertently reveals its conclusion that Sims is the author of the letters. (A. 548). Yet the Board steadfastly refuses to rule on this issue and avoids it by holding it "unnecessary" to its Decision. (A. 549, Note 39).

Angle submits that the truth or falsity of Sims' testimony (and also that of Garrett) is a vital element in the case—first, to resolve credibility issues on testimony such as the supervisory question, and second, in order to rule whether or not false testimony should bar an employee's right to reinstatement and back pay.

1. **Sims**—The Board, through its attorneys who represented the Board in the Federal Court injunction case herein, has knowledge that Sims testified first that he had not seen the second anonymous letter—and then after Wakulich took the stand and shredded Sims' testimony—Sims took the stand a second time and recanted. Based upon this questionable incident, together with the question presented concerning Sims' authorship of the anonymous letters, and finally, the post-trial confession of Garrett that Sims had told him during the Federal Court injunction trial to "keep on denying it" and "they can't prove it" certainly does not paint a picture of an individual who should now be rewarded for his conduct by reinstatement and back wages.

Truth is the very foundation of our judicial system. It goes beyond the ramifications of any one particular case. Surely false testimony should be one of the grounds which the Board utilizes in carrying out its discretionary power not to order reinstatement—especially in a case such as the one at bar in which the witness in question has also been guilty of invading the privacy of his employer's desk and briefcase, contrary to the policy set forth in *Uniform Rental Service, Inc., supra,* not to mention his obvious involvement in the anonymous letters.

2. **Garrett**—Garrett failed to appear for trial. This alone is sufficient to make him suspect, but the deeper issue is the part which he attempted to play before the Federal Court. It was following this attempt (with Sims) that Garrett stated that he [Garrett] "wandered around in a kind of a daze for two days." (G.C. Ex. 17-A, A. 307-19). In his post-trial interview with attorneys for Respondent and the attorney for the Union, Garrett spoke of "perjury" and a "direct lie." (G.C. Ex. 17-A, A. 307-19). Garrett also *admitted* to Dr. Adams that there was great question concerning the truth of his testimony and the testimony of other employees. (A. 238-39; 241-42). Angle submits that such action should not be rewarded by reinstatement and back pay. While the Board has the duty to uphold the National Labor Relations Act—it surely also has the duty to protect its own integrity. To now reward Garrett and Sims in the instant case by reinstatement and backpay after Garrett and Sims spoke as witnesses for the Board in its prosecution case would certainly not appear in the public interest. The Board has been vigorous in its prose-

cution of Angle—authorizing and participating in the first 10(j) case ever conducted by the Seventeenth Region in the 20-year history of Section 10(j). This prosecution was carried out on the basis of "protecting the public interest." As a Federal agency, should the Board not with equal vigor reprimand, rather than reward, witnesses who participate in the type of activity in which Sims and Garrett have been involved?

To prosecute Angle for his alleged activities, yet to reward Sims and Garrett after testifying on behalf of the Board in the injunction case, would hardly seem equal treatment under the law.

Assuming further that Garrett is incapable of testifying (which Angle denies), this presents even more compelling reasons why Garrett should not be reinstated.

3. **Johnson**—Wakulich testified how Johnson had reported his inability to overhear Company management while Johnson went above their private offices. (A. 100). This, too, is not the type of conduct to require reinstatement. This action *was not denied by Johnson.*

The Board failed to give credence to this evidence. Angle submits that the substantial evidence on the record as a whole does not support the Board's conclusion that Sims, Garrett and Johnson should be reinstated in spite of their improper activities.

V. The Board Does Not Have Jurisdiction to Rule on the Dismissal of Rodgers

The District Court ordered only *temporary* reinstatement of Rodgers. The offer of reinstatement which was

accepted by Rodgers was not an offer of "employment"; instead, it was an offer of "temporary reinstatement" required by the District Court's Order.

Such temporary reinstatements are wholly within the jurisdiction of the Federal Courts (See Section 10(j) of the Act). The Board has authority to protect *employees* relative to *permanent* disposition of their cases following complete adjudication of the facts. The Courts have authority to grant "temporary relief" pending final adjudication of the original Unfair Labor Practice Charge of the Board. *Obviously, any complaint relative to the handling of such temporary relief must be processed by the Federal Courts.*

The Board recognized the necessity for proceeding before the Federal Court concerning Angles' alleged failure to carry out the Court's order by instituting the criminal and civil contempt proceedings, which later proved to be unfounded. If General Counsel has a complaint concerning the manner in which Angle dismissed Rodgers from the temporary reinstatement ordered by the Federal District Court, then such complaint must be registered with the Court, not the Board. The Board concludes, without citation of authority, that the Act protects the employee from subsequent discrimination once compliance with the Court order is met. (A. 745-46). But such mental gymnastics are not supported by law.

Instead, the findings of the Board are both illogical and incorrect. Consider for a moment the problem. Rodgers, of course, must be an "employee" in order for

the Board to take action. This is the determination of the Board in Case No. 17-CA 3021 and 3021-2. Angle submits that Rodgers is a supervisor and without standing as an employee. Notwithstanding this fact, the Board concludes that it can obtain an improper District Court order, force Rodgers on Angle's payroll *temporarily* and improperly, and then when Rodgers is dismissed, take the position that the Board had obtained "employment" for Rodgers under the invalid District Court order and claim such action gives Rodgers full rights as an "employee" under the Act. Such logic is ridiculous on its face.

The Board attempts to step across the chasm from temporary employment under the Court Order to voluntary permanent employment by Angle by seizing upon a statement from Angle's October 2, 1967 letter, taken out of context. (A. 746). However, this statement must be viewed in the light of the entire circumstances. At the contempt proceeding, the Board stated to the Court, under oath, in its petition that Angle was not respecting and complying with the temporary reinstatement order of the Court. Angle was painted as a most reluctant and recalcitrant individual who would defy even the United States District Court and both civil and criminal contempt were sought by the Board. When this position was denied by the Federal District Court and the civil and criminal contempt were dismissed without any evidence presented on the part of Angle, the General Counsel, and now the Board, retreated to their own forum and changed the tune which they wished to play, holding that the statement by Angle in his letter was a voluntary permanent

re-employment beyond the scope of the temporary reinstatement order. Overnight, apparently, Angle is supposed to have changed from his refusal to reinstate even temporarily, into a magnanimous permanent reinstatement. Such a conclusion is obviously falsely premised. The remark in Angle's October 2 letter was simply an attempt by Angle to explain to Mr. Rodgers that Angle had been attempting in good faith to reinstate Rodgers as ordered. And, in fact, during the period of time between August 28 and September 19, while Angle had been waiting for the Court's order to become final, Angle had believed in his own mind that he was going to allow Mr. Rodgers to remain on the job, even though Angle was not required to do so by the Court. But this was simply a mental position of Angle which had not reached fruition and was not allowed to reach fruition since Rodgers' final activities took place on the very day the cancellation of the temporary reinstatement order was to become final, i.e., September 19, 1967. Thus, though Angle in his letter indicates he *might* have kept Rodgers *if* Rodgers acted properly, Rodgers failed to do so and the termination occurred in accordance with the Circuit Court of Appeals Order.

As must always happen, a false basic premise leads to a false ultimate conclusion and the error tends to magnify the further it is expanded. The Board's false basic premise reaches recognizable proportions when they attempt to formulate a remedy. On the one hand, the Board states that reinstatement goes only to Rodgers "as an employee undergoing a retraining program for senior operators" and yet, on the other hand, defers the decision to

17-CA-3021 for permanent reinstatement. (A. 746). Thus, in fact, the Board attempts to avoid a conclusion because it is obviously a faulty conclusion, even to the Board.

Angle submits it was prejudicial error for the Board to assume jurisdiction and to litigate the matter of Rodgers' termination from temporary reinstatement.

VI. Rodgers' Discharge from Temporary Reinstatement Was Proper

Rodgers was temporarily reinstated to his former position of a Senior Operator. Obviously, he could not immediately assume completely his former duties and a retraining and reorientation program was necessary. A preliminary but crucial issue is whether the retraining and reorientation program Angle planned for Rodgers was a sham. If it was frivolous and unneeded, then there would be no reason for Rodgers seriously to attend to the program. On the other hand, if the training was necessary, then Angle certainly had reason to be concerned when Rodgers was not giving proper attention to his retraining. The uncontroverted evidence in the record shows that the training program was helpful, necessary and in good faith, which conclusion the Board accepts. (T. 3rd 203).

A. Supervisory Status of Rodgers

General Counsel incorrectly sought to rely on Case No. 17-CA-3021 and 3021-2 to determine Rodgers' supervisory status. (A. 700-02). At the hearing, the Trial Examiner took the position that he was to decide the supervisory question and acknowledges he could disagree with Examiner Goldberg if he so desired. (A. 700). But

in the Decision, the Board takes the position it is not necessary to determine Rodgers' supervisory status, since he was not a true Senior Operator during his re-employment by admission of Angle's counsel. (A. 746). Actually, what Angle's counsel referred to was the fact that Rodgers was in training at the time of his discharge and was not fully performing his Senior Operator duties. (A. 619). Indeed, counsel for the General Counsel takes the position that Rodgers is a Senior Operator. (A. 672).

The record in 17-CA-3378 makes it clear that Senior Operators hold supervisory authority. For example, Rodgers testified that it was his job as a Senior Operator to *run* the control panel and to *direct* the other two junior operators and keep them on a string. (A. 622).

Merle Smith, another Senior Operator, testified that the duties and responsibilities of the Senior Operators are to oversee the entire operation of the plant, control the plant, and direct and assign work to the Junior Operators. (A. 661-62).

The testimony of plant manager Tyler shows that for sixteen hours of the day, the Senior Operator is the ranking person in terms of employment at the plant and issues directions and instructions to the men, that there is an eighty cent an hour pay differential in the Senior and Junior Operators, and that Senior Operators have authority to call out men. (A. 702-05).

A prior determination has been made in an almost identical factual situation under the case of *Ohio Power Co.* v. *NLRB, supra,* that persons such as the Senior Oper-

ator in the instant case are supervisors. (See discussion, *supra*).

B. Dismissal of Rodgers

During Rodgers' retraining and reorientation program, it was obviously necessary for Tyler to learn from Rodgers where more training was needed or what might help bring the training along faster. However, when Tyler questioned Rodgers along these lines, he was unable to get any definite answers. (A. 691). Yet in the vigorous examination of Tyler (A. 687-91) and in its findings (A. 732-33), the Board obviously concludes that Rodgers had all the knowledge that was to be imparted to him during the training program and there was no reason for the training program. This and other portions of the record show that the Board completely misunderstands the nature of Respondent's plant and the duties of the Senior Operator in that plant.

It is clear from the record that the Board does not understand the inter-relationship and necessity for knowledge of the whole plant by the Senior Operator. (A. 667; 670-71; 685-86).

The only evidence in the record is that since Rodgers last worked at the plant, there had been numerous changes in the plant. (A. 681-83). Rodgers never did say he was ready to fully perform his job. In fact, the record supports the fact that Rodgers could *not* perform his job. Smith let Rodgers loose on the control board one day, but had to take over when something out of the ordinary occurred. (A. 671). *Rodgers*, when asked about running

the control board, also *admitted he didn't have proper training to run the board.* (A. 674).

Implicit in Rodgers' reinstatement is the fact that Rodgers is to do an honest day's work for an honest day's pay and act like any other employee should act. This was made clear by Judge Brown when he explained his order.

The facts in this case show, however, that among other indiscretions, Rodgers did the following when he was reinstated:

1. Rodgers immediately started keeping a notebook on Company time concerning Angle's actions, which he was to use to testify on behalf of the National Labor Relations Board in a deliberate attempt to convict Angle of unfounded criminal and civil contempt charges. (A. 633).

2. Rodgers gave reports to NLRB attorneys in a deliberate effort to convict Angle of contempt, at the time the Board attorneys were preparing for trial, which varied from his later testimony, and the Board attorneys relied on these reports in their representations to the Court. (A. 678; 708).

3. Rodgers was *non-committal and unhelpful* in his training program in a deliberate effort to impede his retraining. (A. 644; 691).

4. Rodgers did not try to relearn his job. (A. 669-70; 676-77; 691).

5. Rodgers supplied information to the counsel for the General Counsel in which to cross examine his fellow em-

ployees at the hearing on August 9, which they resented. (A. 635; 638).

6. Reports and testimony of Rodgers concerning the efforts of the Senior Operators to help retrain him varied from what the Senior Operators swore to be the true facts. (A. 645-48; 669-76).

7. Rodgers came to the plant immediately after the unfounded contempt hearing under the guise of picking up his check, but with the pre-calculated plan to stir up and cause trouble at the plant and among the employees who were then working. (A. 628-31).

8. Rodgers attempted to force the Company management to post a Notice at the time the plant was having serious operational difficulties and on the day he undoubtedly knew his own temporary reinstatement was terminating by order of the Circuit Court of Appeals becoming final. (A. 696-99).

Are these the actions of an employee seriously attempting to perform the job for which he was accepting $4.00 per hour from Angle? Contrast Rodgers' actions with Senior Operator Smith who would "lay awake all night trying to figure out things" about his job. (A. 668).

Assuming, for the purpose of argument, that Rodgers had been an "employee," as opposed to a "temporary reinstatee"; and that Rodgers had been an "employee," as opposed to a "supervisor," would Rodgers' activities, nonetheless, properly have subjected him to dismissal?

General Counsel took the following position at the hearing:

"TRIAL EXAMINER: *Do you say the Act would protect a man to testify falsely?*

MR. WACKNOV: *Yes, if this man has testified falsely there is another forum.*" (A. 634) [Emphasis added].

Although this is an obvious mis-statement, it shows the extremes to which the counsel for the General Counsel, who acted as one of the attorneys for the Board in the unfounded contempt charges, went to protect his chief witness in the unfounded contempt case.

There is no doubt about the reasons for Rodgers' discharge, they are succinctly spelled out in the letter of suspension and the letter of discharge. (G.C. 2nd Ex. 4 and 5, A. 721-26).

The most graphic and serious example of Rodgers' improper activities leading to his dismissal were the statements which he gave to the attorneys for the Board during the unfounded civil and criminal contempt proceedings, when such statements were utterly without true foundation. These statements formed the bases of Angle's standing trial for civil and criminal contempt. Questions asked by the Trial Examiner shows that he understands Angle's position that the statements made to the Board's attorneys before trial varied from those given in depositions and at trial. (A. 678-79). But, in its Decision, the Board does not compare the statements Rodgers gave to the Board at the inception of the prosecution to how he testified at the hearing in 17-CA-3378. Instead, they incorrectly compare the testimony in the instant hearing to that in the contempt proceedings themselves. (A. 734-35).

Naturally, Rodgers would not admit he gave false information to the Board attorneys. Obviously, the more credible persons to testify concerning this point are the Board attorneys, Mestal and Wacknov. Angle attempted to have them testify, *but the Board refused* the request. It is indeed unfair for the Board and their attorneys to proceed with an unfounded contempt action based on false information given by Rodgers and inform Angle's counsel of the falsity of such information which is relied on to dismiss Rodgers, but then in a subsequent hearing, when the Board is trying the fact of whether or not their chief witness Rodgers was discriminated against, preclude and foreclose the truth by refusing to allow the Board attorneys to testify. Refusing to get at the truth of the matter is indeed a usurpation of power and unfair. As shown by Angle's offer of proof, it is anticipated that if called, Mr. Mestal would have testified to a conversation with Mr. Robert Martin, Angle's attorney, after the unfounded contempt of court proceedings, as follows:

> ". . . Mr. Mestal said to me, in substance, that he was concerned about the belief on our part that Mr. Wacknov, much less he, had knowledge of the falsity or inaccuracy, or both, of statements made by Rodgers to Wacknov and Mestal and that he wanted to assure me that this was not the truth, that Mr. Wacknov, as well as himself, had been completely misled by Mr. Rodgers as to the retraining program and how he was being treated at the Kansas Refined Helium plant and they were surprised by some of the testimony which Rodgers and others gave at the contempt hearing, and he assured me the attorneys for the Government had been in good faith and had not had knowl-

> edge of the fact that the allegations made to them in the investigatory statements were not true." (A. 708).

Although the Board can suppress the truth of what was stated in the conferences as far as this proceeding is concerned, the fact cannot be suppressed that such a conversation did occur. As pointed out in the discharge letter of October 2, referring to the untruthful accounts of the reorientation program:

> "I base this chiefly upon the fact that the statements of the National Labor Relations Board lawyers and their claims to the Court, are utterly inconsistent with your later testimony under oath on depositions and at the trial." (G.C. 2nd Ex. 5, A. 723).

Being put through the throes of defending an unfounded civil and criminal contempt charge is obviously unpleasant. When an employee uses Company time to gather evidence to attempt an unfounded conviction, and gives false information to Government lawyers in an effort to convict his employer of contempt, the Courts, and certainly the Board, should be the first to allow the employer to discharge such an employee when the truth comes to the surface at the contempt hearing. These matters alone certainly are sufficient to justify Rodgers' discharge. But, as discussed above, there were more.

Immediately after the trial, Rodgers was out at the plant again attempting to stir up trouble. This time, on the guise of picking up his check, he brought the intermediate report of Trial Examiner Goldberg out to the plant to show it to the employees who were then being paid by Angle to work. The purpose of Rodgers to show this

Decision to the employees then being paid to work and to stir them up against Angle is obvious.

Unsatisfied with only stirring up part of the Angle employees on Saturday, next Monday Rodgers was at it again. This time, he picked a time when the plant was having serious production problems. This was obvious to everyone in the plant and it was a maximum effort by everyone to get the plant back on "stream". (A. 696-97) The overall message of Rodgers' remarks and actions was an attempt to force Tyler to post the Examiner's Decision immediately on the bulletin board and to threaten to report him if he failed to do so, and then, apparently, to threaten to report him if he refused to allow Rodgers to do his reporting from the Company offices during business hours. (A. 697-99). This is obvious insubordination.

Angle submits that the substantial evidence and the law does not support the finding that Rodgers' discharge was in violation of the Act.

VII. Substantial Evidence on the Record As a Whole Shows the Unit Alleged in the Complaint Is Not Appropriate for the Purposes of Collective Bargaining

The unit found appropriate by the Board is limited to Angle's Kansas Refined Helium plant. Without burdening the brief with pages of facts, Angle submits that such conclusion is not supported by substantial evidence. Instead, the substantial evidence shows the presence of the following, which are normally looked to by the Board in determining the appropriate unit: Integration of Angle's operations; centralization of management of Angle's operations; centralization of labor relations policies; employee inter-

change between Angle's various companies; similarity of skills; close geographical location, some similarity of employee benefits, and no collective bargaining history.

The Board has relied on these factors in many cases in finding a plant-wide unit is *inappropriate*. A case very similar to the Angle operations is *L & S Construction Co., Inc.*, 155 NLRB No. 49 (1965). The factors as set forth above show that various employees of the L & S Company had a substantial community of interest with the employees of other companies and it was held the unit sought was inappropriate. Other similar cases are *Farrington Mfg. Co.*, 87 NLRB 1051 (1949); *Home Exterminating Co.*, 160 NLRB No. 108 (1966); *Haliburton Co.*, 142 NLRB 644 (1963); *Levitz Service Co.*, 121 NLRB 205 (1958).

Federal Courts have made similar findings. For example, *NLRB* v. *Purity Food Stores, Inc.*, 376 F.2d 497 (1st Cir. 1967), refused to enforce a decree which limited the unit to one store in a retail chain.

All of Angle's evidence on integration of operations, centralization of management, labor relations policy, employee interchange, similarity of skills, geographical location, employee benefits, and collective bargaining history, shows that *the helium plant does not function as a separate entity*.

The Trial Examiner concludes that the plant is a well-defined and self-contained installation with a full crew of operating personnel and accepts the unit as presumptively appropriate. (A. 573-76). Two factors show that this conclusion is erroneous:

1. The extent of employee interchange at the plant. (Respon. Ex. 26, 27 and 28, A. 487-89).

2. The severance of the pipeline personnel from the helium plant is improper.

The problems that could erupt from excluding the employees of other Angle operations from the unit is well depicted by the First Circuit in *NLRB* v. *Purity Food Stores, Inc.*, 376 F.2d 500-501:

> "It seems to us obvious that in view of the frequent interchange of employees from store to store, either permanently or for part-time work, only friction between employees and chaos in labor relations could possibly result if some employees were under union rules as to wages, hours, seniority, grievance procedures, etc. when the employees working beside them in the same category were not. *The Board's conclusion to the contrary flies in the face of reality.*" [Emphasis added].

These questions obviously perplexed the Board and the best reason that could be advanced for the exclusion of the pipeline employees was "estoppel." (A. 576). Such a finding is misguided and contrary to the purposes of the Act.

The crux of the Board's point concerning estoppel is that Angle seeks to take a position in the Charge case which is inconsistent with his position taken at the Representation hearing. Nothing could be further from the truth. At the Representation hearing, Angle took the position that the unit sought then by the Union, which is similar to the one now found appropriate by the Board, was inappropriate. At the Representation hearing, Angle took the position that the list of employees to which the Board refers (A. 576)

was an inappropriate list and that is Angle's present position. Angle did not abandon its position that pipeline personnel should be included in the unit, as shown by Respon. Ex. 7 at the Representation hearing (introduced herein as G.C. 19, A. 427) listing the supervisors of all the Angle operations, *including the pipeline.*

The Board also erroneously precludes its concern for the pipeline employees on the basis that it is Angle and not the pipeline employees that raises this point. (A. 576). The Board, which is charged with the duty of protecting the rights of employees (which includes *all* employees), can ill afford to take such a position. As vividly pointed out in *NLRB* v. *Purity Food Stores, Inc.*, 376 F.2d at 501:

> "To be sure the selection of an appropriate bargaining unit gives the majority of employees within that unit the bargaining representative they desire. But this selection *may also affect the employer, employees excluded from the unit but affected by the selection, and minority employees within the selected unit.*" [Emphasis added].

And, as also pointed out in that case, 376 F.2d at 500:

> " '[T]here should be some . . . consideration given to the employer's side of the picture, the feasibility, and the disruptive effects of piecemeal unionization.' "

The Court in *Purity* required the Board to protect the interests of *all employees involved.* The Board should do no less for the Angle pipeline employees.

The substantial evidence on the record as a whole does not support the finding that a plant-wide unit is appropriate. Indeed, there is virtually no evidence that such is the case.

An appropriate unit involving the Kansas Refined Helium plant must include the Great Plains Drilling employees, Kansas Refined Helium employees, and the pipeline employees, or, at the very least, the helium plant and the pipeline employees. The finding to the contrary by the Board is improper.

VIII. There Is No Proper Showing That a Majority of the Employees Designated the Union As Their Representative

The record is replete with testimony showing Senior Operators (who, as shown above, should properly be held to be supervisors) were responsible for soliciting and obtaining the great majority of the Union membership application cards. (A. 110; 113; 114; 116; 118). Since the cards are "tainted" with such supervisory solicitation, it is improper for the Board to find Union representation based on these cards.

In addition, the facts, as shown above, make it clear that the Union sought to organize the employees by way of an election. The refusal to bargain Charge was obviously prepared as an afterthought after consultation with the Board.

The "card" itself is a blatant example of deceit. It is entitled "Membership Application," has a membership receipt, and the language concerning Union authorization is carefully put in small print after the membership information. The ambiguity that exists on the face of these cards is reason enough for their rejection as valid designations of the Union. Moreover, in light of such ambiguity, evidence of subjective intent of the signers is important.

The misrepresentations, however, do not end with the membership application itself. The Union, in its literature, told the complete story of how employees organize through the election procedure. (Respon. Ex. 2-A, page 4, A. 437). Numerous letters to the employees from the Union spoke in terms of an election. (Respon. Ex. 3, 6 and 7, A. 457; 463-66).

There were also conversations and representations to employees that the purpose of the cards was for an election and for other purposes.

Considering the Union's tactics, it cannot be reasonably said that the employees, by their act of signing membership applications, thereby clearly manifested an intention to designate the Union as their bargaining representative.

The Supreme Court, in *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575 (1969), deals only with single-purpose cards which state clearly and unambiguously on the face that the signer designated the Union as his representative. The Court there held that such designations were proper authorizations of the Union. Angle submits, however, that the cards in the instant case were not unambiguous on their face and, thus, the evidence as to misrepresentations is meaningful.

Angle produced evidence showing ambiguities, discrepancies, and misrepresentations linked with the membership applications. The Union is the one that chose the path of deceit. It would be a simple matter to allow testimony of employees concerning why they signed the cards. To deny such testimony is repugnant to the time-tested legal concepts and purposes of the Act, and allows the Union to take advantage of its own deceitful tactics in obtaining the protected rights of the employees.

Angle submits that the substantial evidence on the record as a whole does not support the Board's finding that the cards were proper designations of the Union.

IX. The Bargaining Order Is Improper

At the time the Trial Examiner Goldberg made his decision, the Supreme Court Decision in *Gissel Packing, supra*, had not been announced and, thus, the decision was based on the antiquated test of "good faith doubt." In finding Angle violated 8(a)(5) of the Act, the Board finds that Angle's activities destroyed the conditions necessary for the holding of a free election, and made the holding of a fair election in the future unlikely. For these reasons, the Board considered it was essential that Angle be ordered to recognize and bargain with the Union as the representative of the employees for the purposes of collective bargaining, citing the *Gissel Packing* case.

The *Gissel* case, of course, holds that a bargaining order is an appropriate remedy where an employer rejects a Union card majority while at the same time committing unfair labor practices that tend to undermine the Union's majority and *make a fair election among employees an unlikely possibility.*

In its finding herein, the Board makes no real effort to determine whether an election is now possible. In fact, the Board overlooks the only evidence in the record whatsoever dealing with whether an election can be held. This evidence is simply this—the Board itself petitioned United States Courts for a very unusual and harsh remedy, that of a 10(j) injunction against Angle. *The sole purpose for the Board asking and the sole purpose for the Court granting*

this 10(j) injunction against Angle was to preserve the situation so that an election could be held. The Board, in its petition for the injunction, alleged:

(a) That an injunction was necessary to prevent Angle from "*successfully obliterate[ing] the rights of employees to cast a free vote in a National Labor Relations Board election.*" (Para. VI(4), page 4) [Emphasis added].

(b) Angle's actions are denying the employees their right "to support and assist the union by *indicating their choice of representation in a secret ballot election.*" (Para. IX, page 6) [Emphasis added].

(c) That Angle, unless enjoined, would "prevent them [the employees] from exercising their statutory right to vote for, or against, a union in a *secret ballot election* conducted under the auspices of the National Labor Relations Board." (Para. X, page 7) [Emphasis added].

(d) That unless restrained, "it may be fairly anticipated that respondent will continue its unlawful course of conduct so that a free and uncoerced election will be impossible to conduct by the time respondent is ultimately placed under the restraints of a final Board order and Court decree." (Para. X, page 7).

Pursuant to the petition for the injunction, and after an open hearing, the United States District Court for the District of Kansas entered an injunction requested by the Board, obviously to preserve the status quo and possibility of having an election. The Board is now in no position to preclude such an election. The ability to hold an election was preserved and, therefore, under *Gissel*, an election should be held.

It is the duty of the Board to protect the interests of the employees. If the employees are entitled to an election to express their desires by a secret ballot, the Board should be the first to sustain it. For the Board to completely overlook and attempt to "bury" its allegations made in the Federal Court and, instead, preclude the election which it sought to preserve by the 10(j) injunction, is gross error.

In addition, since the Union insisted upon the Senior Operators as supervisory personnel to be in the unit, the unit was obviously inappropriate. It has long been held that an employer is not guilty of "refusal to bargain" if the unit demanded by the Union erroneously includes supervisory personnel. (*Deaton Truck Line, Inc.* v. *NLRB*, 337 F.2d 697 (5th Cir. 1964); *NLRB* v. *Florida Agricultural Supply Co.*, 328 F.2d 989 (5th Cir. 1964). Of course, too, if the unit limited to the plant is inappropriate, Angle was under no duty to bargain.

X. It Is Improper for the Board to Render Any Decision in This Matter, in Light of Prior Allegations and Conclusions of the Board and Other Connected Actions Against Angle

This is the case in which the Board is indeed in an unusual position. First, it caused its attorney to file with the District Court for a 10(j) injunction, alleging that it had reason to believe that Angle committed certain unfair labor practices. The Board obtained the 10(j) injunction and temporary reinstatement was offered and given to certain of the plant personnel. In fact, the Board obtained the temporary reinstatement of Rodgers based on

an improper order. In this 10(j) injunction proceeding, the Board took the position that there was *reasonable cause to believe that the allegations in the Complaint were true* and that Angle was violating the Act. The Board also took the position that Angle would continue to commit acts in violation of the Act in the future.

Thereafter, the Board filed under oath an unfounded contempt petition alleging that Angle had refused to carry out the Court's order in part. The Board proceeded with its unfounded contempt action, but could not make out a case against Angle with its own evidence, and the case was dismissed. Although Angle was given a free bill of health by the United States District Court on the contempt matter he had to face again the Board, his former adversary in the unfounded contempt charge, as *Judge* to determine whether the Government's chief informant, Rodgers, was discharged for giving false information to the Board. In addition, the Board holds the key to allowing the truth to come to the surface, that of allowing its attorneys to testify as to what actually did happen. However, the Board has chosen to submerge the truth by refusing to allow its attorneys to so testify.

Likewise, in spite of its allegations against Angle in the 10(j) injunction proceeding itself, Angle was also forced to be judged by the same Board who alleged that Angle was violating the Act. How can one body properly allege that Angle is violating the law, on the one hand, and then, on the other hand, sit as his judge to determine whether he was violating the law? Petitioner submits that due to such positions and conclusions by the Board, it is

improper and, indeed, impossible, for the Board to now sit in judgment of Angle. Accordingly, any order of the Board against Angle is improper and invalid.

XI. The Circuit Court Should Not Order a Remedy Considered and Found Inappropriate by the National Labor Relations Board

At the hearing in Cases 17-CA-3021 and 17-CA-3021-2, counsel for General Counsel requested the "unique remedy" of finding backpay without the deduction of interim earnings. (A. 7). The Trial Examiner refused such a remedy on the basis that he was "not convinced that the remedy requested by the General Counsel could be justified, under the cirmcumstances of this case, as necessary or appropriate to effectuate the policies of the Act." (A. 553-54). He also notes that "Punitive measures have not been considered or authorized by the Act and I shall not recommend this one." (A. 554).

The Union excepted to the recommended order of the Trial Examiner "as it relates to his recommended remedy with respect to the deduction of net earnings of the respective employees, earned during the period of their discharge," but such relief was *denied* by the Board.

In 17-CA-3378, the Union excepted to the Trial Examiner's failure to recommend "1. That discriminatee Rodgers be offered reinstatement with backpay without deducting interim earnings therefrom, and (2) That discriminatee Rodgers' backpay continue until he secures substantially equivalent employment if he elects not to accept Respondent's reinstatement offer if and when a

good faith offer is made." This remedy was also denied by the Board.

The Union has not presented the bases of its position for this unique remedy, so Angle cannot respond to it fully at this time. It is obvious that the Union's unique remedy is an attempt to do more than make those involved whole for any loss due to Angle's acts. The Act is *remedial* in nature and not punitive. Angle submits that the relief sought by the Union was so clearly punitive and beyond the Board's authority that it was not given serious consideration by the Board. In addition, the United States Supreme Court has ruled that relief very similar to that proposed by the Union is *improper*. (*Republic Steel Corp.* v. *NLRB*, 311 U.S. 7 (1940)).

The question of the authority of the Court to review the affirmative relief portion of the Board's order is discussed in the very recent case of *Love Box Co., Inc.* v. *NLRB*, ... F.2d ....., 73 LRRM 2746 (10th Cir., March 5, 1970), as follows:

> "The Supreme Court has considered orders on a case by case basis. In NLRB v. Seven-Up Bottling Co., 344 U.S. 344 (1953), the Court examined the Board's order providing a formula for determining the amount of back pay to be awarded a discharged employee. The Court of section 10(c) said: 'It charges the Board with the task of devising remedies to effectuate the policies of the Act. Of course the remedies must be functions of the purposes to be accomplished, . . .' The Court also said, as to the back

pay at least, that the power was broad, was discretionary, and for the Board, not the courts. . . ."

. . .

"It would appear from the Gissel case that the Court is prepared to apply essentially the same standards to section 10(c) affirmative relief orders as it has to other findings of the Board with only the footnote reference to the expertise of the Board on the subject and the 'special respect' to be given to it by the reviewing courts. . . ."

The Courts and the Board, of course, must limit the remedial powers under Section 10 of the Act to carrying out the policies of the Act itself. In the past, the United States Court of Appeals for the District of Columbia Circuit fashioned the remedy of compelling an employer to agree to a proposed check-off clause (a remedy which was not originally devised by the Board). The Supreme Court, however, reversed and remanded the decision, noting that it is the job of Congress, and not the Courts or the Board, to make such a decision. (*Porter Co.* v. *NLRB*, ____ U.S. ____, 73 LRRM 2561 (March 2, 1970)).

Angle submits that the remedy proposed by the Union is not one the Court should devise, when the Board itself has refused to devise such a remedy. It is for Congress to propose such a remedy, not for the Court or the Board. In any event, this is not the proper instance for use of such a remedy.

CONCLUSION

Wherefore, Angle requests that the Board's orders be set aside in their entirety.

Respectfully submitted,

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 23,295, 23,300

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

GEORGE A. ANGLE, D/B/A KANSAS REFINED HELIUM COMPANY,

Intervenor.

Nos. 23,[redacted]750, 23,[redacted]751

GEORGE A. ANGLE, D/B/A KANSAS REFINED HELIUM COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petitions for Review and Cross-Application for Enforcement of Orders of The National Labor Relations Board

BRIEF OF THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals
for the District of Columbia Circuit

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OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

GEORGE A. ANGLE, D/B/A KANSAS REFINED HELIUM COMPANY,

Intervenor.

Nos. 23,750, 23,751

GEORGE A. ANGLE, D/B/A KANSAS REFINED HELIUM COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petitions for Review and Cross-Application for Enforcement of Orders of The National Labor Relations Board

---

BRIEF OF THE NATIONAL LABOR RELATIONS BOARD

ISSUES PRESENTED FOR REVIEW

1. Whether substantial evidence on the record as a whole supports the Board's finding that the Company interfered with, restrained and coerced its employees in violation of Section 8(a)(1) of the Act.

2. Whether substantial evidence on the record as a whole supports the Board's finding that the Company discharged six employees in violation of Section 8(a)(1) and 8(a)(3) of the Act.

3. Whether substantial evidence on the record as a whole supports the Board's findings that the Union represented a majority of the Company's employees and that the Company refused to bargain with it and unilaterally granted a wage increase in violation of Section 8(a)(5) and (1) of the Act.

4. Whether substantial evidence on the whole record supports the Board's findings that the Company suspended, and later discharged, one employee in violation of Section 8(a)(3) and (1) and Section 8(a)(4) and (1) of the Act.

5. Whether there is merit to the Union's challenge to the Board's order.

In accordance with Rule 8(d) of the General Rules of this Court, the Board states that this case is before the Court for the first time on the merits.

REFERENCE TO RULINGS

Nos. 23,295 and 23,300 are before the Court upon petitions of the Union (Oil, Chemical and Atomic Workers International Union, AFL-CIO) to review two orders of the National Labor Relations Board issued against the Company (George A. Angle, d/b/a Kansas Refined Helium Company) pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*). Nos. 23,750 and 23,751 are before the Court upon petitions of the Company to review the same orders of the Board. The Board has filed a cross-application for enforcement of

its orders against the Company. The proceedings have been consolidated pursuant to order of the Court. The Board's decisions and orders issued on June 25, 1969, and are reported at 176 NLRB Nos. 115 and 116 (A. 508-616, 728-756).[1]

COUNTERSTATEMENT OF THE CASE

I. THE BOARD'S FINDINGS OF FACT

In 176 NLRB No. 115 (Board Case No. 17-CA-3021) the Board found that the Company violated Section 8(a)(1) of the Act by coercively interrogating employees concerning their activities and the activities of other employees on behalf of the Union, by threatening to discharge employees for union adherence or activities, by threatening to close its plant because of its employees' union activities, and by granting a wage increase to discourage employees' union activities and support. The Board further found that the Company violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging six employees because of their concerted activities and membership in the Union. The Board also found that the Company violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and by unilaterally granting its employees a wage increase.

In 176 NLRB No. 116 (Board Case No. 17-CA-3378) the Board found that the Company suspended one employee for engaging in protected activity and later discharged him for giving testimony under the Act, in violation of Sections 8(a)(3) and (1) and 8(a)(4) and (1) of the Act. The evidence on which the Board's findings are based is summarized below.

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[1] "A." references are to the printed appendix. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

A. Background

In 1964, George Angle contracted with the American Messer Corporation for the latter to construct and begin operation of an automated plant at Otis, Kansas, designed to extract helium from natural gas and reduce it to a liquid state for sale (A. 511; 121-122, 142). Pursuant to the contract, American Messer constructed the plant, hired and trained personnel to run it, and commenced start-up operations in July 1965 (A. 512; 142). In April 1966, American Messer turned the functioning plant over to Angle (A. 512; 142).[2]

B. The advent of the Union

The chain of events which precipitated this litigation began in mid-June 1966,[3] when employee Dwayne Johnson, at the request of some of his co-workers, contacted the Union, which assigned Hager Patton, an international representative, to assist the employees in their organizational efforts (A. 512; 8, 85). About June 14, Patton first met with employees Johnson, Sims and Rodgers. At Patton's request, they provided him with a list of all the Company's employees for use in a preliminary survey of employee interest. After completing the survey, Patton and C.R. Williams, another union representative, met with the three employees mentioned above and employee Harris. During this meeting all four employees signed cards designating the Union as their collective bargaining representative (A. 512-513; 8-10).

On June 29, after receiving more signed authorization cards, Patton wrote to the Company, stating that the Union represented a majority of

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[2] Angle also owns companies engaged in exploration, drilling and maintenance of wells, and transportation of oil and gas (A. 511; 141).

[3] Unless otherwise noted, all events herein occurred in 1966.

the production and maintenance employees at the Company's plant in Otis, and offering to meet with company representatives for the purpose of negotiating a collective bargaining agreement (A. 513; 13-14, 264). The next day, Patton wrote to the Board's Seventeenth Region, enclosing an election petition, the cards of "30% or more" of the employees at the Company's plant, a list of the card signers and a copy of his letter to the Company requesting bargaining. Copies of the letter to the Board and the Petition were sent to the Company (A. 513; 16-17, 458-460). Angle received both letters in Wichita the same day, and on July 6 wrote to Patton, acknowledged receipt of his letters, and stating that he did not believe that the Union represented a majority of his employees "in the proper bargaining unit" and that "we will proceed to handle this matter through an election conducted by the National Labor Relations Board" (A. 513; 17-18, 145-146, 265).

C. The Representation Case

A pre-election hearing was held on August 9. One of the major questions raised was whether, as the Company contended, the employees known as "senior operators" were supervisors within the meaning of the Act and, accordingly, ineligible to vote. On August 25, the Regional Director issued his decision, finding, *inter alia*, that the senior operators were supervisors. He therefore excluded them from the appropriate unit (A. 514; 258-262). The Union requested that the Board review that portion of the Regional Director's decision which held the senior operators to be supervisors. The Board denied this request, but amended the Regional Director's decision to permit the senior operators to vote subject to challenge (A. 514; 263).

On September 21, the Board's Regional Office wrote to the parties in the representation case informing them that because the Union had filed

unfair labor practice charges – which initiated the instant proceeding – the election which had been scheduled for September 28 was postponed indefinitely pending disposition of the unfair labor practice case or a request by the Union to proceed with the election (A. 514; 305). On May 31, 1967, the Regional Director, acting upon the Union's request to withdraw its election petition, ordered that the decision and direction of election be vacated, that the notice of hearing be withdrawn, and that the proceeding be closed (A. 514-515; 339-340).

D. The Company's response to the Union's efforts

1. Interrogation and Threats

On July 28, Angle hosted a dinner which was attended by almost all of the Company's employees who were not then on duty, some of Angle's oil field workers, and members of his family (A. 532; 86). According to the credited testimony of employee Dwayne Johnson, Angle

> became kind of upset. He said that he had been through two wars and it was tough and he'd get people that crossed him, anybody that crossed him . . . and revenge was a passion with him, and that his relation with his oil field people had always been a matter of root-hog-root and that they had always been that way or he would shut the plant down or sell it or give it to L.B.J.

(A. 532; 86-87).

On the evening of August 27, employee Russell Bishop met Norman Klein[4] at a pool hall in Otis. After some general conversation they began

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[4] Klein is comptroller for all of the Angle companies and general manager of Kansas Refined Helium (A. 534; 119).

discussing the Union. Klein stated that "Mr. Angle had told him that he didn't care what the union said or did, he was going ahead and fire who he pleased and hire who he pleased . . . And he was going to get rid of all the union agitators or organizers" (A. 534; 28-29).

2. The anonymous letters and the interviews

On Monday, June 27, Angle received an unsigned letter which began:

> You have at your Otis Plant a situation of which I feel you should be apprised. Perhaps this is none of my affair, as it affects me indirectly. However, if your plant does not run, it will affect my position.

(A. 515; 143, 468-470). The remainder of the letter was a criticism, with supporting detail, of the plant manager, blaming him for "unrest and dissatisfaction" which had, stated the writer, recently arisen in the plant (*ibid.*). Angle's response was to summon Plant Manager Owens to Wichita the next day and speak with him (A. 515; 144-145).

A second anonymous letter followed the dinner Angle gave on July 28 and criticized the speech he made that evening (A. 515; 471-472). On July 29, Angle wrote each of the Company's employees, enclosing a copy of this letter and posted the letter on the plant bulletin board (A. 515-516; 33-34, 163, 473-474). About August 30, Angle received another anonymous letter (A. 516; 146, 475). This letter criticized the management of the plant, and named nine employees willing to do "anything to curry favor . . . " (*ibid.*). It was after receipt of the third letter, Angle testified, that he decided to interview all of the Company's employees (A. 147).

Between September 13 and September 19 Angle interviewed all employees of Kansas Refined Helium. He testified that his statements were

virtually identical in each interview (A. 535; 147, 150). According to Angle, he began each interview by telling the employee that he had never met or interviewed him before, and was doing so then "for a situation that I feel is desperate" (A. 535; 148). Angle told each employee that he would ask many questions and that he knew the answers to some, and encouraged them to speak as they felt in order to preserve their self respect (A. 535; 148). He next mentioned dissension in the plant and showed each employee the first of the three anonymous letters, asked him to read it, and "watch[ed] them carefully as they read it for any visible sign that they had ever read it before, or for their reaction" (A. 535; 149). Angle then showed the second letter – which he had previously mailed to all employees and posted in the plant – and, finally, the third. He discussed the letters with each employee and indicated that he was trying to discover who wrote them (A. 535-536; 149). In the course of the interview, Angle asked each employee except Rodgers, " . . . because he had appeared at the hearing in August . . .", whether he had signed a Union card, and asked those who said yes why they had signed and from whom they got their cards (A. 536; 153, 155, 163). Angle asked for the identity of employees who had been talking about the Union and told each employee "that I must find this group of malcontents, the agitators . . . causing this tremendous dissension . . . and then get them out the gate and never to return" (A. 536; 154-155, 163).

In the course of the interviews, Angle told Bishop and Harris that if they were not happy with the Company, they could go to plants that have them, and told Harris that since employees who favored the Union could not be happy with the Company, they were "malcontent," and that he would fire all "malcontent" employees (A. 537-539; 26, 40). Angle also told several employees that he would fire anyone who was not completely happy with him and with the Company (A. 541; 27, 87). Further,

Angle accused the senior operators of being "union agitators," and threatened to fire all "agitators" and everyone who had signed an authorization card (A. 544; 28, 46, 82).

3. Unilateral Wage Increases

In a letter Angle sent to all of the Company's employees on July 27, he stated:

> We have just completed a review and raised wages in all other divisions of the Company. The question came up about raises for KRH employees. I have checked and found that the Union can file unfair labor practices charges against us if we either give or promise to give new raises to any employees that the Union claims to represent.

(A. 544; 286). On August 2, the Union sent the following response to Angle:

> This is to advise you, and by copy of this letter to the National Labor Relations Board they are likewise advised, that the Oil, Chemical and Atomic Workers International Union will not file unfair labor practice charges against you or your Company by reason of your granting to employees of KRH the same or similiar [sic] wage increases as granted to your other employees so long as such wage increases are granted on an equitable and non-discriminatory manner, now or at any time before the NLRB election among KRH employees.

(A. 544; 17, 461-462).

On September 21, the day after the six discharges described below, the Company notified all remaining employees (except two, who had been hired during the preceding summer) that they would receive wage increases

ranging from $.15 to $1.00 per hour effective September 26 (A. 544; 94-95, 107, 297-303).

4. The Discharges

Angle held his final interviews on September 19 (A. 545; 147). On September 20, employees Bishop, Harris, Sims, Rodgers, Johnson, and Garrett were summoned to Angle's office. Angle told the group that he did not like long goodbyes, handed them identical letters of termination and checks for accrued and severance pay, and stated that the reasons for their discharge were set out in the letters (A. 545-546; 29-30, 40, 82-83, 89, 266-267).[5]

Sims remained after the others left and asked Angle why they had been fired (A. 546; 60). Angle told Sims that his life's work was invested in the plant, that "he wasn't going to put up with the Union coming in and telling him what to do, and that we, the ones that were discharged, were the ones that caused all the trouble in the plant and that if he got rid of us . . . he was going to scare the rest of the men in the plant"

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[5] In the letters, Angle stated: "I am terminating your employment for some of the following reasons." After telling the employees that he felt they were dissatisfied, he set forth his belief that

> . . . in your mind you believe that you are absolutely justified in not cooperating with me or my other employees as far as fitting into this group or getting along with the others. In fact, you are adamant to the point you do not want to take orders from me or anyone else who works for me.
>
> Further, you are completely insistent that I am going to change my lifelong concept, my business and my rleationship with the other 100 employees, or else you are going to remain malcontent and dissatisfied in your job . . . .

(A. 546-547; 266-267).

(A. 546; 61). Angle then said that he knew that some employees had lied to him about signing union cards, and that he would identify and fire them – "I am going to get everybody that had anything to do with it. It may take me a day, week or six months, however long, but I will find them all" (A. 546; 61).

Angle told Sims that he had consulted his attorney, but that he did not need him any more because "he was going to take care of it himself in his own way," and that "he was going to do anything he had to do to protect himself" (*Ibid.*). Angle concluded by telling Sims that he had received reports that Sims was an excellent operator, but that "You were causing me trouble at the start of this thing here and I just don't want you here" (A. 546; 62).

E. Rodgers' reinstatement and subsequent discharge

In the proceeding initiated by the Board pursuant to Section 10(j) of the Act, the United States District Court for the District of Kansas, on April 5, 1967, issued a temporary injunction directing the Company to make offers of reinstatement to the six discharged employees.[6] On July 17, 1967, Rodgers received a letter from Angle offering him reinstatement,

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[6] *Sacks v. Angle*, 65 LRRM 2098. On August 28, 1967, the United States Court of Appeals for the Tenth Circuit modified the reinstatement order to exclude Senior Operators Rodgers and Sims. *Angle v. Sacks*, 382 F.2d 655. The Court of Appeals did not make a determination as to the supervisory status of the senior operators, but observed that the Regional Director's Decision and Direction of Election, in which he found the senior operators to be supervisors, was "the last ruling on their status by the agency concerned," and concluded that their temporary reinstatement "is not necessary to protect the efficacy of a final order by the Board regarding the status of senior operators . . ." 382 F.2d at 661.

and he reported for work on July 19 (A. 729; 622-623, 720).[7] At that time, Plant Manager Tyler gave him some flow charts and operating manuals, and told him to color the charts and study the manuals. Rodgers was instructed to use the office of Plant Engineer Harms, who was on vacation (A. 731; 653, 657). Rodgers then asked whether he could get a cup of coffee. Tyler replied, "No, I want you to stay here. I want to post a notice on the bulletin board because the men don't know you are back to work and I want to save any embarrassment so I will post a notice on the board first." (A. 731; 653) About an hour and a half later Tyler returned and told Rodgers he could get coffee (A. 731; 652). Later that day, as he was on his way to get coffee, Rodgers passed Angle, who was standing at the bulletin board, and said, "hello George." Angle looked at Rodgers but said nothing (A. 731; 654-655). Passing Tyler's office on his way back from the coffee pot, Rodgers heard Angle tell Tyler, "I would like to get that sonofabitch outside" (A. 731; 655-656).

For the first three days after he returned, Rodgers remained in Harms' office coloring flow charts, except when he went for coffee (A. 732; 651, 710). After the third day, Rodgers asked Tyler if he could "go to the maintenance building or anyplace [he] wanted to go in the plant." Tyler agreed (A. 732; 654). After about three days of coloring flow charts Tyler gave Rodgers a series of questions about plant operations, which were to be answered in essay form. Rodgers was instructed to continue using Harms' office. Rodgers spent two or three weeks writing answers to these questions, going into the plant only when necessary to examine a piece of equipment (A. 732; 710-711). During this time, Tyler occasionally questioned Rodgers about the retraining program. Rodgers at

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[7] Rodgers and employee Garrett were the only two of the six discharged employees who elected to return to work (A. 729).

one point stated that if he were retraining an employee, he would put the man where he was going to work "and get him to do the job himself" (A. 732; 657-658). On another occasion, Tyler told Rodgers he might have him work with a junior operator to speed up his retraining, but this was never done (A. 732; 658).

After Rodgers finished answering the written questions, Tyler assigned him to the control room and told the senior operators to train him "in the normal manner" and when they made a move "to explain why they made it" (A. 732; 656). When the senior operators did not explain what they were doing or when Rodgers did not understand an operation, he asked questions (A. 733; 646-647, 656, 660-661). In addition to his assigned work, Rodgers rearranged operational manuals, made new conversion cards for the control panel, took periodic readings from three new instruments, and volunteered for overtime work (A. 733; 659-660).

On September 13, 1967, Rodgers appeared pursuant to a subpoena from the General Counsel and testified in a contempt proceeding arising from the District Court's reinstatement order. The trial ended on September 15 (A. 735; 628-629). On Saturday, September 16, 1967, which was not a working day for him, Rodgers went to the plant and picked up his check (A. 735; 628). He had with him a copy of the Trial Examiner's preliminary decision in Case No. 17-CA-3021.[8] He discussed the decision with four employees who were at work, and they read the appendix containing the notice the Trial Examiner had ordered Angle to sign and post. There was some discussion as to whether Angle would

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[8] In that decision, which issued September 12, 1967, the Trial Examiner found violations of Section 8(a)(1) and 8(a)(3) of the Act, and ordered reinstatement of the six discharged employees.

sign the notice, and Rodgers opined that he would. Rodgers remained at the plant less than one hour (A. 735-736; 629-630). Plant Engineer Harms saw Rodgers before he left, but did not speak to him (A. 736; 631).

On Tuesday, September 19, 1967, Rodgers worked the 8 a.m. to 4 p.m. shift. At about 2:30 p.m. Rodgers met Tyler in the hall and asked if he had a few minutes to talk. Tyler said that he did, and invited Rodgers into his office. Rodgers, referring to the Trial Examiner's preliminary decision, asked whether the notice had to be posted. Tyler replied that he did not know, but that if the Company was supposed to post the notice, it would. Rodgers stated, "Well, I don't know whether it does have to be. Do you know for sure?" Tyler said that he was not sure, and Rodgers then observed that the appendix to the decision said that if there were questions concerning the decision they should be directed to the Board's Regional Office in Kansas City, and asked if he could make a telephone call. Tyler gave his permission, and Rodgers obtained a copy of the decision from his car. Before making the call, Rodgers again asked Tyler if he could use the telephone, but Tyler then replied, "No, you can't talk." Rodgers asked if he meant he couldn't call at all, and was told, "you can't call now." Rodgers then pointed out the language of the last sentence on the notice.[9] Tyler replied, "I don't even know if this is the right thing . . ." He stated that he intended to call Angle in Wichita. Rodgers asked, "Well, after you call Wichita if they say it is all right, can I go ahead and call them up?", and Tyler said "as it stands now you can't call." Rodgers said "O.K." and returned to his duties in the control room. This entire conversation lasted between 3 and 5

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[9] The notice stated: "If employees have any questions concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 610 Federal Building, 601 East 12th Street, Kansas City, Missouri, 64106, telephone FR4-5181."

minutes, including the time Rodgers spent getting the decision from his car (A. 736-737, 623-626).

The next morning, September 20, Tyler summoned Rodgers to his office, handed him an envelope, and told him to read the letter it contained (A. 737; 626-627). The letter was signed by Angle. Referring to the events of the previous day, Angle asserted that Rodgers "insisted" that the notice be posted "immediately," "insisted" that Tyler read the Trial Examiner's decision, "attempted to make a private long distance telephone call from the plant," and, when Tyler denied him permission to call, "questioned him repeatedly" about his decision (A. 737-738; 721). Angle continued, informing Rodgers that at the time of the incident in question, "the plant was off-line and certain emergency conditions occurred, and reoccurred." Angle stated that Tyler had been "extremely busy" at the time, and accused Rodgers of "creat[ing] a disturbance . . ." Angle concluded the letter by informing Rodgers that he was suspended indefinitely without pay. After Rodgers read the letter, Tyler accompanied him to the gate (A. 738-739; 627, 722).

On September 27, 1967, the Company wrote Rodgers, enclosing a check for "the pay period ended September 17, plus the 2 days September 18 and 19" (A. 739; 727). The letter stated that he was not being paid for September 14 and 15, 1967, because he testified at the contempt trial only on September 13, and that as to the other two days, Angle "presume[d] that you were appearing in an advisory capacity to the NLRB attorneys" (*ibid.*). On October 2, 1967, Angle sent Rodgers a 4-page letter reciting several acts of alleged misconduct by Rodgers, and discharging him (A. 739-745; 627-628).

II. THE BOARD'S CONCLUSIONS AND ORDER

On the above facts the Board found that the Company coercively interrogated its employees, threatened them with discharge and plant closure, and granted a wage increase to discourage union adherence and activity in violation of Section 8(a)(1) of the Act. The Board also found that the Company violated Section 8(a)(3) and (1) of the Act by discharging six employees because of their concerted activity and membership in the Union. Further, the Board found that the Union had been validly designated as collective bargaining representative by a majority of the Company's employees in a unit appropriate for collective bargaining and that the Company's refusal of the Union's request for recognition and bargaining, and its granting of a unilateral wage increase violated Section 8(a)(5) and (1) of the Act. Finally, the Board found that the suspension and discharge of Rodgers, after his reinstatement, were for engaging in protected activities and because of his appearance and testimony at a Board hearing and the contempt trial, and that the Company thereby violated Section 8(a)(3), (4) and (1) of the Act.

The Board's orders require the Company to cease and desist from the unlawful conduct found or from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them under Section 7 of the Act. Affirmatively, the Company is required to offer full reinstatement to the discharged employees, to make them whole for any loss of earnings suffered, to bargain, upon request, with the Union, and to post appropriate notices (A. 556-558, 597-598, 615).

ARGUMENT

I. SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE COMPANY INTERFERED WITH, RESTRAINED AND COERCED ITS EMPLOYEES IN VIOLATION OF SECTION 8(a)(1) OF THE ACT

The Company's response to the Union's presence was clearly designed to counter the threat of unionization. As the facts set forth in the Counterstatement demonstrate, in its attempt to defeat the Union, the Company interfered with, restrained and coerced its employees in the exercise of the organizational rights secured by Section 7 of the Act.

A. The Interviews

Angle's interviews of all employees, beginning only two weeks before the scheduled representation election, constituted the most patent form of coercive conduct. And their effect was surely magnified by their extreme length – from one-half to over three hours (A. 150) – the fact that Angle himself conducted all interviews, and the location of the interviews in his private office.

As shown above, Angle admitted asking each employee whether he had signed a card, and asking those who replied affirmatively why they signed and from whom they obtained the cards. Further, Angle testified that in every interview he inquired into the identity of those who were talking about the Union, and told the employees that he must find the "malcontents" and "agitators" and "get them out the gate . . . never to return" (A. 154-155, 163). In addition, Angle told various employees that he would not permit a union in the plant, "that he had put his life's work into this, and that he wasn't going to let the National Labor Relations Board or the union or . . . anybody else stand in his way" (A. 44, 46). He also told employees that if they were for the union it meant they were

"malcontent", and that he was going to "get rid" of the people in the plant that were "malcontent" (A. 40); that he was going to fire "everybody that has signed a union card," (A. 46); and that "by the time he got through firing people there wasn't going to be anybody left to vote for the union" (A. 47). Such systematic interrogation of employees by an employer, conducted as it was here under coercive circumstances, coupled with expressions of extreme hostility for unionism and with threats to discharge union adherents, is unquestionably violative of Section 8(a)(1) of the Act. *International Union of Electrical Workers (Tiidee Products) v. N.L.R.B.*, decided April 3, 1970, 73 LRRM 2870 (C.A.D.C.); *International Union, etc. (Preston Products Co.) v. N.L.R.B.*, 129 U.S. App. D.C. 196, 201, 392 F.2d 801, 805-806 (1967), cert. denied, 392 U.S. 906; *Amalgamated Clothing Workers (Hamburg Shirt Corp.) v. N.L.R.B.*, 125 U.S. App. D.C. 275, 277-279, 371 F.2d 740, 742-744 (1966). Similarly, General Manager Klein's threat to employee Bishop that Angle "was going to get rid of all the union agitators or organizers" (*supra*, p. 7), was as the Board found, plainly a further violation of Section 8(a)(1) (A. 29). See cases cited *supra*.

B. Angle's Speech

During his speech to the employees at the July 28 dinner, Angle spoke of revenge and of "get[ting] people that crossed him." He described his relationship with his oil field employees as being "a matter of root-hog-root[10] and that they had always been that way or he would shut the plant down or sell it or give to L.B.J." (A. 87).[11]

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10 The Trial Examiner found the correct phrasing of this aphorism to be "root, hog, or die," which may be characterized as offering the alternatives of either complete acceptance and cooperation, or total failure. See A. 533, n. 25.

11 Angle denied making a speech at the dinner. The Trial Examiner credited employee Dwayne Johnson's account. In these proceedings the Trial Examiners carefully (cont'd)

In his 13 years of business, none of Angle's companies had been unionized, and Angle admitted that he had no experience or association with unions (A. 162, 164). Thus, it was reasonable to conclude, as the Trial Examiner did (A. 533), that what "had always been" was the absence of unions from all Angle enterprises. When taken with the suggestion in Angle's contemporaneous letter that unionization would necessarily cause changes in the Company's employer-employee relations (A. 286-287), the wording of Angle's speech leaves no question that Angle was in fact threatening reprisals against the employees, including plant closure or sale as a direct consequence of unionization, Angle thereby further violated Section 8(a)(1) of the Act. *N.L.R.B. v. Gissel Packing Corp.*, 395 U.S. 575, 619-620 (1969); *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263, 274, n. 20 (1965).

C. The unilateral wage increase

As noted in the Counterstatement, on August 2, the Union wrote to the Company and the Board, stating that it would not file unfair labor practice charges against the Company for granting wage increases to its employees before the scheduled Board election which were similar to those given to other Angle employees, provided that any such increases were "equitable and non-discriminatory" (A. 461). Relying on this letter, the Company asserts that its announcement of a general wage increase on September 21 did not violate Section 8(a)(1) of the Act. To accept this contention would be to ignore the events of the preceding day, since, on September 20, Angle discharged six active union supporters for reasons

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[11] (cont'd) set out their reasoning in making credibility determinations. See, e.g., A. 534, 540, 581-582, 747, n. 2. It is settled law that such determinations are peculiarly within the province of the Board and its Trial Examiners and should not be overturned on review. *N.L.R.B. v. Walton Mfg. Corp.*, 369 U.S. 404, 407-408 (1962); *Joy Silk Mills v. N.L.R.B.*, 87 U.S. App. D.C. 360, 369, 185 F.2d 732, 741 (1950), cert. denied, 341 U.S. 914.

which, as shown by the record, were discriminatory and violated the Act. These six employees did not receive the pay increases, and therefore the pay increases were neither "equitable" nor "non-discriminatory." Since the pay increases were given immediately before the scheduled date of the election,[12] and immediately after the coercive interviews and discriminatory discharges, the foreseeable effect of the raises was to induce the employees to vote against the Union, thereby infringing on their freedom of choice in violation of Section 8(a)(1) of the Act. *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405, 409-410 (1964); *International Union, etc. (Preston Products Co.) v. N.L.R.B., supra*, 129 U.S. App. D.C. at 201, 392 F.2d at 806; *Joy Silk Mills v. N.L.R.B., supra*, 87 U.S. App. D.C. at 368-369, 185 F.2d at 739.

II. SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE COMPANY DISCHARGED SIX EMPLOYEES IN VIOLATION OF SECTION 8(a)(3) AND (1) OF THE ACT

A. The employees were discriminatorily discharged

As shown *supra*, company officials repeatedly threatened to discharge union adherents, and Angle coercively interrogated every employee, in violation of their Section 7 rights. Throughout his interviews, Angle expressed animus toward the Union. The interviews included inquiry as to each employee's union activities and those of his fellow workers, along with threats to fire "union agitators," "malcontents", and all who signed

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[12] The Board's letter informing the Company that the election had been indefinitely postponed was dated September 21. The Trial Examiner presumed that it was not received until the following day, and the Company has offered no evidence that it knew of the letter at the time it announced the raises (A. 545, n. 32).

union authorization cards. It was in this atmosphere of active efforts to discourage unionization that the Company discharged the six union adherents.

If there was any doubt about the unlawfulness of the discharges, it was dispelled by Angle's remarks to Sims immediately after the six employees were terminated. In testimony which was uncontradicted, Sims related how Angle told him, after the other five employees had left, that he had put all of his "life's work" into the business, that he would not permit the Union or the National Labor Relations Board to come in and tell him what do do, and that therefore he had discharged those who had caused the "trouble" at the plant (A. 61). Angle told Sims that he had gotten rid of the six employees in order to "scare" the remainder of the employees at the plant, that he intended to keep after those who had signed union cards, and that he would fire anyone who had "anything to do with it" (*Ibid.*).[13] Angle's comments, without more, establish beyond question the unlawfulness of the discharges.

The discharge letter that Angle wrote to each employee is also relevant to the determination of motivation for Angle's action. After speaking in the letter of the "unquestioned dedication and loyalty" of most of his employees, Angle expressed his belief that the six dischargees did not share this attitude, that they were dissatisfied, uncooperative, and "adamant" in not wanting to take orders from him or any of his employees. Further, he accused them of being "completely insistent that I am going to change my lifelong concept, my business and my relationship with the other 100 employees, or else you are going to remain malcontent . . ." (A. 266).

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[13] The Board properly found these threats to discharge employees for union adherence to be independently violative of Section 8(a)(1) (A. 544). *Food Store Employees Local 347 v. N.L.R.B.*, ___ U.S. App. D.C., ___, 418 F.2d 1177, 1180 (1969); *International Union etc. (Preston Products Co.) v. N.L.R.B.*, *supra*, 129 U.S. App. D.C. at 201, 392 F.2d at 806.

When testifying concerning this letter, Angle stated that with one exception he knew of no situation in which any of the discharged employees had refused to take orders from anyone in the Company. Angle also testified, again contrary to his accusations in the letter, that all six were cooperative, and that their job performance was not the basis for the discharges (A. 164, 166). Moreover, Angle admitted that all of the discharged employees had told him during the September interviews that they wanted written company policies concerning the retirement and certain other benefits (A. 165).[14] It is thus clear from a comparison of Angle's testimony, with the text of the letter, that although the written reasons given for the discharges do not accurately represent the real reasons, the letters do reflect his conclusion that the way to deal with employee discontent and efforts at unionization in his plant was to discharge the union activists.

Angle testified that in addition to the reasons stated in the letters of discharge, the six employees were fired because he "suspected" they had something to do with the three anonymous letters he had received (A. 164). He also stated, however, that at the time of the discharges, he had "no positive proof" that even one of the six was connected with the letters (A. 162, 164). Although Angle claimed that he believed the letters had contributed to the discontent and dissension in the plant, all three letters were addressed to him alone; the only mass publicity was the result of Angle's mailing the second letter to all employees and displaying them during the September interviews. Thus, Angle, and not the unidentified author or authors, committed the act which put the letters in a potentially

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[14] Dischargee Harris testified that during his interview, he told Angle that the lack of written policies – and the accompanying uncertainty among the employees as to the substance of company policies – was a motivating factor in his signing an authorization card (A. 38).

provocative position. Moreover, the letters, viewed objectively, are in fact constructive, and not inflammatory. Indeed, the most irritating feature of the letters appears to be the absence of signatures. But there is nothing contained in the letters, as the Board noted, "so destructive of production or discipline as to justify the discharge of employees for having written them" (A. 549). In any event, the Board concluded that the company's "preoccupation" with the three letters was a "red herring" – a device to divert attention from the anti-union purpose underlying, the discharges (A. 548). The effect of the letters the Board held, as a motivating factor for the discharges was "inflated herein as a tactic of litigation" (A. 548, n. 37). This conclusion is unavoidable in view of Angle's undenied statements to Sims disclosing the anti-union purpose behind the discharges. Angle's statements clearly showed, as the Board held, "that it was his intention to carry out the threat made several times earlier to other employees; that he would see that there were not enough union sympathizers left in the plant to constitute a majority in favor of the Union" (A. 550).

B. There is no merit to the Company's defense based on the alleged supervisory status of senior operators

Of the Company's approximately 22 employees, 4 are designated "senior operators" (A. 518; 306). At the time of their discharges, Sims and Rodgers were senior operators, and if, as the Company contends, they were supervisors, it was not a violation of Section 8(a)(3) to discharge them. As we show below, the Board properly rejected the Company's contention, holding that at most the senior operators are leadmen, but that they are not supervisors within the meaning of the Act (A. 530).[15]

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[15] Contrary to the Company's suggestion, no significance attaches to the fact that the Regional Director, in his decision prior to the election, concluded that the senior (cont'd)

A "supervisor" is defined in Section 2(11) of the Act as:

> . . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The interpretation of this statutory term calls into play the Board's "special function of applying the general provisions of the Act to the complexities of industrial life." *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221, 236 (1963). For in this area there exist gradations of authority "so infinite and subtle that of necessity a large measure of informed discretion is involved in the exercise by the Board of its primary function to determine those who as a practical matter fall within the statutory definition of a 'supervisor.'" *N.L.R.B. v. Swift & Co.*, 292 F.2d 561, 563 (C.A. 1, 1961), quoted with approval in *Marine Engineers Beneficial Ass'n v. Interlake S.S. Co.*, 370 U.S. 173, 179, n. 6 (1962). Accordingly, " . . . the Board's determination is to be accepted if it has 'warrant in the record' and a reasonable basis in law." *N.L.R.B. v. Hearst Publications*, 322 U.S. 111, 131 (1944). Accord: *N.L.R.B. v. United Insurance Co.*, 390 U.S. 254, 260 (1968); *Keener Rubber Co. v. N.L.R.B.*, 326 F.2d 968, 969-970 (C.A. 6, 1964), cert. denied, 377 U.S. 934.

In urging that the senior operators are supervisors, the Company relies principally on two of the factors set out in Section 2(11) – their alleged

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15 (cont'd) operators were supervisors (*supra*, p. 5). The Union requested Board review of that determination, and the Board, without passing on the merits of the issue held that the senior operators could vote subject to challenge. Since the election was never held, there has not been any prior Board determinations of the status of the senior operators.

authority effectively to recommend rewards, and in addition, discipline. However, the only disciplinary problem between a senior and a junior operator appearing in the record involved the failure of a junior operator (Stahlman) to perform a task which normally would be encompassed by his duties (A. 522; 47). Thereafter, Plant Engineer Tyler told the senior operators that they had no disciplinary powers over juniors and that if a situation should arise involving the possible need for disciplinary action, they were to call him and he would take the necessary action. Tyler subsequently discharged Stahlman (A. 522; 47, 79, 134-135). On the evidence presented, the Board reasonably concluded that Tyler did no more than offer to investigate fully and decide on disciplinary problems as soon as they arose, and that the senior operators do not possess authority effectively to recommend disciplinary action (A. 523, n. 12).

The Company contends that an incident involving senior operator Sims demonstrates that the senior operators possess authority effectively to recommend wage increases for the junior operators.[16] In April, 1967, after Sims had heard that one or two junior operators were to receive raises, he told Plant Engineer Tyler that he felt that junior operators Wakulich and Garrett, who worked with him, as well as Harris who did not, were as qualified as any other junior operators and deserved raises. Tyler replied that he would think it over (A. 522; 72-73). About a month later Tyler asked Sims if he wanted to accompany him when these three juniors were informed of their raises. Sims agreed, and went with Tyler. Tyler told the employees that they had been doing fine work and

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16 Of the other three senior operators in the plant, Ham testified that he had done nothing about wage increases for junior operators; Rodgers was not questioned concerning the matter and Harms was not called as a witness (A. 523, n. 13; 110).

deserved raises, and Sims then congratulated each of them (A. 522-523; 73-74). The Company's records show that of the 21 employees in the plant, Wakulich, Garrett and Harris received raises on May 9, and ten other employees received raises on May 23.[17] Eight employees did not receive raises in May, and of those, five had just begun their employment that month or the preceding one (A. 523; 297-303). On the basis of this evidence the Board justifiably concluded that the three raises given on May 9 were actually part of a "general pay raise," and that, accordingly, neither Sims nor the other senior operators have authority to make effective recommendations for wage increases (A. 523).

The Company argues that the wage differential between senior and junior operators – ranging from 45 to 85 cents per hour – is further evidence of the senior operators' supervisory status. While it is true that a wage differential may be indicative of supervisory status, the Board found that the difference here, for the reasons hereafter indicated, does not support the conclusion urged by the Company. Pay data furnished by the Company shows that as of June 1966, three senior operators received $3.85 per hour, and the fourth $3.75 (A. 524; 94, 297, 298, 302). All had worked at the plant since July 1965, and were among the first operating personnel hired. Only three of the ten junior operators were hired in 1965, and the highest rate paid to any of these three was only 45 cents less than the lower rate paid to senior operators. The Company contends that since the skills possessed by the two classes of operators are essentially the same, the pay differential reflected the senior operators' supervisory authority. The Board, however, found no evidence in the record to support this assertion. As the Trial Examiner noted, "It is, therefore, at least

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[17] All but one of the May 23 raises were greater than those given on May 9 (A. 523; 297-303).

as reasonable to argue that it was the experience which they had acquired in the operation of this outstanding installation which made the senior operators, whose duties involved its nerve-center, sufficiently valuable to Respondent and attractive to others in the industry to justify Respondent's higher wage rates in an effort to keep them in his employ" (A. 524-525). Adding support to the Board's conclusion is Plant Engineer Tyler's characterization of the senior operator as "a more skilled employee" than a junior operator (A. 140). Also significant is the fact that senior operators Sims and Rodgers both had prior relevant experience while employed by the National Helium Company (A. 519; 51, 77, 78). Moreover, as shown above, all senior operators, but only 30 per cent of junior operators, had worked at the plant from the commencement of operations. Thus, the record demonstrates that the senior operators were more skilled and experienced than the junior operators, and supports the Board's conclusion that the wage differential reflected compensation for this expertise.

The Company contends that, because the only personnel scheduled to be at the plant between 4 p.m. and 8 a.m. Monday through Friday and at all times on weekends were the operators, the senior operators had control of the plant and must therefore be considered supervisors. The Board found, however, that in the particular circumstances of the Company's operations, the mere physical absence of managerial personnel did not render the senior operators supervisors (A. 521). Thus, it is undisputed that the major portion of the plant's operations were, though technically complex, essentially routine. As described by Senior Operator Sims, there were no "substantial operative procedures which [he was] expected to perform which are not already outlined by company manuals or texts" (A. 76). And although it is true that managerial personnel were physically absent from the plant a majority of the time during the night and weekend periods, this factor does not reflect the entire reality of the situation.

Plant Manager Owens, Plant Engineer Tyler, and Maintenance Manager Stiff all lived near the plant. Tyler frequently worked in his office on weekends (A. 521: 136). And Tyler and Klein were in the plant "quite often" at night and on weekends both to see how the plant was running and to leave instructions covering periods when they would be absent (A. 75). Moreover, when a situation out of the ordinary arose[18] during these hours, the senior operator on duty would telephone one of his superiors, usually Tyler, for instructions (A. 48, 74, 137). If possible, Tyler provided a solution over the telephone or told the senior operator "who to call out to take care of the trouble" (A. 48). If this could not be done he would come to the plant (A. 48, 74, 136). As indicated above, Tyler often left instructions with the operators concerning duties to be performed during his absence. These directions would normally be in the form of entires in the Special Order Book.[19] This book and the "blue book" were kept in the control room. Tyler described the blue book as containing "the standard functions that occur during a shift . . ." (A. 138). The special order book, on the other hand, contained instructions for operators which were not routine, and, if trouble was anticipated, designation of the personnel to call for assistance (A. 53, 139). In the circumstances presented we submit, the Board justifiably concluded that the responsibility exercised by senior operators did not amount to supervisory authority, just because of the absence of supervisory personnel from the plant during nights and weekends.

The Company relies on two more factors as indicia of supervisory status. The first is the wording of several intra-plant notices which were

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[18] E.g., if there was "something unusual in the way of operations" (Rodgers, A. 74); "whenever we had trouble" (Sims, A. 48).

[19] Entries in this book were made by Tyler, Owens, and Stiff – primarily by Tyler; the operators never made entires (A. 520; 30-31, 32, 53, 138-139).

posted in the plant between October 1965 and April 1966 (A. 482-483, 485). The Board found that the notices in question contained terminology which was merely conclusionary and which could not be taken as proof of the actual relationship between the two classes of operators (A. 526). In the absence of evidence of clear conferral of power, such statements must fall into the same class as "tables of organization and job descriptions," which "do not vest powers." *N.L.R.B. v. Security Guard Service*, 384 F.2d 143, 149 (C.A. 5, 1967).[20]

The Company also relies on a notice posted on February 5, which stated (A. 525; 482):

> Beginning next work week . . . February 7, 1966 . . . each supervisor will approve employees time cards . . . Senior Operators will approve employees under their supervision . . .

The Board noted that the reference to employees under the "supervision" of the senior operators is purely conclusionary, and that the notice draws a distinction between senior operators and "supervisors", since it refers separately to each (A. 525). In any event, in light of Tyler's admission that the time cards were not valid until he signed them (A. 137), the senior operator's initials amounted to no more than the mechanical verification of attendance; the significant act of converting the cards to effective payroll documents was left to Tyler, the true representative of management. See *Western Saw Manufacturers*, 155 NLRB 1323, 1329, n. 11 (1965). Cf. *Elliott-Williams Co.*, 149 NLRB 1242, 1243 (1964).

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[20] See also, *N.L.R.B. v. American Oil Co.*, 387 F.2d 786 (C.A. 7, 1967), cert. denied, 392 U.S. 906, where the Company based its claim that certain employees were supervisors, upon a bulletin professing to confer certain powers on them. It contained a paraphrase of a substantial portion of Section 2(11) of the Act. The Court, however, upheld the Board's finding that the employees were not supervisors.

In sum, the senior operators did not stand as figures of authority with respect to the juniors. Rather, the three operators on a shift constituted a team. The efforts of all were interrelated and all had a direct effect on the functioning of the plant. An instruction from senior to junior issued as the result of the senior being physically in a position to receive feedback information from the machinery, and fall far short of the statutory requirement of the use of independent judgment to responsibly direct the juniors. As this Court said in *International Union of United Brewery, etc. Workers v. N.L.R.B.*, 111 U.S. App. D.C. 383, 389, 298 F.2d 297, 303 (1961), cert. denied, *sub nom. Gulf Bottlers v. N.L.R.B.*, 369 U.S. 843, the transition from employee to supervisor "becomes an actuality when he is found to possess real power 'in the interest of the employer' to take meaningful action with respect to the statutory tests . . . He must then, when acting, become in effect a part of management, not simply a lead man or straw boss." As to the factors which control this finding, the Court continued, " . . . there must be a determination of status based upon the 'nature' of the supervisory position and 'how completely the responsibilities of the particular position identify the holder of the position with management' . . ." (*ibid.*).[21] In other words, "some kinship to management, some empathic relationship between employer and employee, must exist before the latter becomes a supervisor for the former." *N.L.R.B. v. Security Guard Service, supra*, 384 F.2d at 149 (C.A. 5, 1967). We submit that the Board properly found the senior operators, who along with the junior operators, directly control the machinery of the plant, not to satisfy this test.

The Company relies on *Ohio Power Co. v. N.L.R.B.*, 176 F.2d 385, 387 (C.A. 6, 1949) where it was held that "the possession of any one of

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[21] Quoting from *Local 636, Plumbers v. N.L.R.B.*, 109 U.S. App. D.C. 315, 323, 287 F.2d 354, 362 (1961).

the authorities listed in Section 2(11) places the employee invested with this authority in the supervisory class." This Court, however, cautioning against a "wooden reading" of Section 2(11), has rejected the approach of the Sixth Circuit in *Ohio Power.* Instead, in *Food Store Employees Union, Local 347 (G.C. Murphy Co.) v. N.L.R.B.*, ____U.S. App. D.C.___, 422 F.2d 685, 690 (1969), the Court held that the existence of "one or more of the functions listed by the statute" is not determinative, that "Section 2(11) must function as a guide rather than a checksheet, and the Board is far more able than this Court to evaluate 'the infinite possible variations in responsibilities enumerated in [the statute]'" quoting from *International Union of United Brewery Workers v. N.L.R.B., supra.* Accord: *Amalgamated Clothing Workers (Block-Southland Sportswear, Inc.) v. N.L.R.B.*, ____U.S. App. D.C., ___, 420 F.2d 1296, 1300 (1969).[22]

C. There is no merit to the Company's defense based on alleged misconduct of Garrett, Johnson and Sims

The Company argues that even if the discharges of the six senior operators were unlawful, Garrett, Johnson and Sims are not entitled to reinstatement because of their alleged misconduct. Specifically, the accusations are that Garrett did not appear at the unfair labor practice hearing, that Johnson admitted to employee Wakulich that he could not hear conversations in the plant manager's office from the building's rafters, and

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[22] In *Ohio Power, supra,* the court placed great, if not determinative, emphasis on the fact that in an emergency the control operator had authority "to requisition any men on the spot, in fact, to direct the activities of substantially all the employees . . . ." and that in the absence of a shift operating engineer, it was his responsibility to direct the other employees in handling emergencies. 176 F.2d at 388. Here, in contrast, the senior operators, in case of emergency, always notify one of their superiors, who directs subsequent actions.

that Sims abstracted Company files, gave conflicting testimony, and engaged in other misconduct.

As to Garrett, the Company argues that he should be denied reinstatement because he "failed to appear" at the initial unfair labor practice hearing. There is no merit to this contention. Neither the General Counsel nor the Company called him as a witness, and no request was made for a subpoena to compel his attendance (A. 550). Subsequent to the issuance of the Trial Examiner's preliminary decision the Board granted the Company's motion to reopen the hearing for the purpose of taking Garrett's testimony. The Company alleged that Garrett had given false testimony previously. However, after hearings and psychiatric examinations of Garrett, the Trial Examiner concluded that he was "physically unable to testify as prescribed in the Board's order and that his condition is not likely to improve in the foreseeable future" (A. 612). The Board, observing that, because of Garrett's condition, his testimony would not be of any evidentiary value, rescinded its order reopening the hearing, and issued its decision on the merits (A. 614). As we show below, there is ample support in the record for these conclusions.

At the reopened hearing on April 24, 1968, Garrett's attorney stated that Garrett's personal physician had informed him that Garrett was a "recognized emotionally unstable person," that the pressure of participating in a hearing "might be harmful to this man's health . . . and might destroy his usefulness to his family," and that the physician recommended that Garrett be given a psychiatric examination before being compelled to testify (A. 605; 230-232). Company counsel agreed to Garrett's undergoing the examination before testifying (A. 233). Accordingly, the Trial Examiner continued the hearing pending the outcome of the psychiatric examination (A. 605). The hearing resumed on September 10, 1968 (A. 607; 234). The evidence adduced at that time may be summarized as follows:

Dr. Austin Adams, a psychiatrist, who treated Garrett from May 11 to some time in July, 1968, testified that Garrett's symptoms indicated that he was paranoid schizophrenic (A. 608; 238). The doctor further testified that, although, through treatment, Garrett was able to function properly outside the hospital, he was not cured, but was in a "social remission" – in other words, the condition could become active again (A. 608; 239). Dr. Adams further testified that at least part of the cause of Garrett's illness was the pressure of testifying in prior related proceedings, and that "the danger of his testimony precipitating another illness would be so great" that he recommended that Garrett not testify. Moreover, he said, the stress of testifying could destroy Garrett's ability to distinguish between truth and fantasy (A. 608-609; 240, 241, 243-244, 245).

Dr. Adams' opinion was concurred in by another psychiatrist, Dr. C. J. Kurth, who examined Garrett in July, 1968, and testified for the Company. In his report covering the examination of Garrett (A. 610; 248, 505-507), Dr. Kurth concluded that Garrett was in a reasonable state of adjustment, as the result of his condition being in remission and of the medicine he was taking. He continued (A. 610):

> To place him on a witness stand could certainly break down his adjustment mechanism, shatter his defense and might even precipitate a psychotic episode. I do not anticipate this picture will change much in time.

Thus, we submit, the Board properly concluded that the probability of Garrett being harmed by being compelled to testify far outweighed any benefit which might be gained from his testimony, especially in light of the psychiatrists' description of the effect of a psychotic episode on the ability to identify truth. Accordingly, there is no merit to the Company's contention that the Board prejudicially denied it the right to call this witness.

The sum of the Company's assertion against Johnson is based on the testimony of Wakulich that, at some time before Angle's September interviews, Johnson told him that when he was in the rafters of the plant above the office that Angle later used, he "couldn't hear anything that was going on because John Stiff in the office right next to him was making so much noise on the telephone" (A. 100). As the Board held, taking this testimony at its face value, it fails to show that Johson was in the space above the office for any improper purpose, or that Johnson's remark was anything other than "a casual statement in an innocent context" (A. 551). The Company, we submit, has failed completely to establish improper conduct by Johnson of a type to warrant denying him reinstatement under the Board's order.

As to Sims, the Company first argues that his involvement with the writing of the anonymous letters disqualified him from reinstatement. Relying on the uncontradicted evidence of anti-union motive underlying Sims' discharge, the Trial Examiner found that even if Sims did bear any responsibility for the letters, this would not disqualify him for reinstatement. As the Trial Examiner stated, "I cannot find that the writing of these letters constituted misconduct at all – much less the heinous offense it appears to be in Angle's eyes" (A. 551). As further evidence of misconduct by Sims, the Company cites the testimony of Wakulich that, during Angle's interviews with the employees Sims told him that "if you go into the latrine you can hear what is going on in that office . . ." (A. 101). Sims, on cross-examination, was asked about alleged eavesdropping, and answered that when he was in the rest room next to the office in which the interviews were held, "I heard when [Angle] got to screaming at times . . . I didn't hear exactly what he said, but I heard him hollering" (A. 68-69). These two statements clearly are not proof of spying by Sims.

The Trial Examiner did not decide whether Sims removed company papers from an office or from Angle's briefcase. Instead, assuming without deciding that Sims engaged in the alleged activities, he found that such conduct, if committed, would not justify denial of reinstatement. Wakulich – the only witness to testify for the Company on this question – related that while Angle was away from the plant for lunch during the employee interviews, Sims removed some papers from a briefcase which Sims "assumed" to be Angle's and showed them to him (A. 99, 104). Sims categorically denied this (A. 69). As for his discovery of the second anonymous letter in Klein's desk, Sims explained that he found it while looking for a copy of a company insurance policy at the request of his co-worker, Wakulich (A. 64-65). *Uniform Rental Service, Inc.*, 161 NLRB 187 (1966), enforcement denied, 398 F.2d 812 (C.A. 6, 1968), which the Company cites in support of its position that Sims is not entitled to reinstatement, is inapposite. There, the Board, reversing the Trial Examiner, specifically denied reinstatement to an employee who "without authority . . . improperly enters her employer's private office and pilfers a letter . . ." 161 NLRB at 190. The controlling factors in *Uniform Rental* were unauthorized entry and pilferage. The instant case is quite different, for here the plant offices are not off limits for operating employees. Sims testified that he occasionally entered an office at the plant and, sometimes in the presence of management, obtained items from desk drawers. He was never told to discontinue this practice (A. 72). The Company produced no evidence to contradict Sims. Indeed, its witness, Wakulich, testified that he had never been told not to go into the offices, had seen other employees taking things from them, and agreed with the characterization that the offices were "pretty openly and freely used by the employees . . ." (A. 102). It is further questionable whether the conduct attributed by the Company to Sims through Wakulich amounted to pilferage, in that

the papers in question were quickly replaced. Sims testified without contradiction that he replaced the anonymous letter in Klein's desk (A. 67). And Wakulich – whose testimony is the only evidence that Sims removed anything from a briefcase – stated that Sims returned the papers to the briefcase after they had looked at them.

On the basis of the foregoing, we submit, the Board reasonably concluded that none of the three employees engaged in misconduct so serious as to make them unfit for further employment. The issue here is not whether the conduct attributed to the employees would be grounds for discharge "but whether the misconduct is sufficiently serious that an employee wrongfully discharged is to be denied the otherwise appropriate remedy of reinstatement" *N.L.R.B. v. Yazoo Valley Electric Power Co.*, 405 F.2d 479 (C.A. 5, 1968). Further, in judging whether denial of reinstatement is warranted, the nature of the employer's unfair labor practices which brought on the reinstatement order may properly be taken into consideration. *Yazoo Valley Electric Power Co., supra; N.L.R.B. v. A.P.W. Products Co.*, 316 F.2d 899, 904 (C.A. 2, 1963); cf. *Local 833, UAW-AFL-CIO, International Union United Automobile, etc. v. N.L.R.B.*, 112 U.S. App. D.C. 107, 110-112, 300 F.2d 699, 702-704 (1962), cert. denied, 370 U.S. 911. Here, the flagrant nature of the Company's violations is readily apparent.

III. SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE COMPANY VIOLATED SECTION 8(a)(5) AND (1) OF THE ACT BY REFUSING TO BARGAIN WITH THE UNION DESIGNATED BY ITS EMPLOYEES AS THEIR COLLECTIVE BARGAINING REPRESENTATIVE AND BY UNILATERALLY GRANTING A WAGE INCREASE

A. The appropriate bargaining unit

In concluding that the Company violated Section 8(a)(5) of the Act, the Board found appropriate for the purposes of collective bargaining a unit consisting of "all production and maintenance employees at the Respondent's plant . . . but excluding . . . employees of other operations of George A. Angle." The Company contends that an appropriate unit must include the employees of other Angle enterprises. As we show below, the Company's contention is without merit.

Section 9(b) of the Act authorizes the Board to determine whether "the appropriate unit for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." Section 9(b) also directs the Board to fashion its unit determinations in such a manner as "to insure to employees the fullest freedom in exercising their rights guaranteed by this Act . . . ." Such Board unit determinations "involve of necessity a large measure of informed discretion" (*Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485, 491 (1947)) and should not be set aside unless the reviewing court finds that the Board has exercised its discretion in an arbitrary of capricious manner. *Retail, Wholesale & Department Store Union v. N.L.R.B.*, 128 U.S. App. D.C. 41, 44-45, 385 F.2d 301, 304-305 (1967); *Mueller Brass Co. v. N.L.R.B.*, 86 U.S. App. D.C. 153, 155, 180 F.2d 402, 404-405 (1950); *N.L.R.B. v. Belcher Towing Co.*, 284 F.2d 118, 120 (C.A. 5, 1960). It is further to be noted that the Act

only requires that the Board designate an appropriate unit for collective bargaining and hence it is within the discretion of the Board to choose between alternative appropriate units. *Local 1325, Retail Clerks International Association v. N.L.R.B.*, ____ U.S. App. D.C. ____, 414 F.2d 1194, 1202 (1969); *Retail, Wholesale, etc. Union v. N.L.R.B., supra*, 128 U.S. App. D.C. at 45, 385 F.2d at 305; *Mueller Brass Co. v. N.L.R.B., supra*, 86 U.S. App. D.C. at 156, 180 F.2d at 405.

In attempting to demonstrate the impropriety of the Board's unit determination, the Company has assumed the burden of showing a clear abuse of discretion by the Board. "[O]ne undertaking this burden 'wages an uphill fight' . . . The burden becomes especially onerous where, as here, a single-plant unit was certified; the Board has working in its favor a presumption that a plant unit is appropriate absent a bargaining history on a multi-location basis or a showing of company-wide integration sufficient to negate the autonomy of the single unit." *N.L.R.B. v. New Enterprise Stone & Lime Co.*, 413 F.2d 117, 118 (C.A. 3, 1969), quoting *N.L.R.B. v. Schill Steel Products, Inc.*, 340 F.2d 568, 574 (C.A. 5, 1965). And the Board, in explaining the operation of the presumption in favor of a single-plant unit, has stated that this presumption will support the appropriateness of such a unit "unless such plant unit has been so effectively merged with another as to destroy its identity." *Temco Aircraft Corp.*, 121 NLRB 1085, 1088 (1965). And see, *Welsh Co.*, 146 NLRB 713, 715 (1964); *Black and Decker Mfg. Co.*, 147 NLRB 825, 828 (1964). Factors which the Board will rely on in finding a single-plant unit to be appropriate are substantial authority of the plant manager over day-to-day operations, lack of significant employee interchange between plants, different job classifications, existence of the plant as a self-contained operating unit, and absence of a history of collective bargaining on a broader scale. See, e.g., *Puritan Caribbean, Inc.*, 180 NLRB No. 155, 73 LRRM 1195 (1970);

American Linen Supply Co., Inc., 129 NLRB 993, 995 (1960); *Continental Can Co.*, 145 NLRB 1427, 1429 (1964); *American Cyanamid Co.*, 146 NLRB 1415, 1417-1418 (1964); *Famous-Barr Co.*, 153 NLRB 341, 342-343 (1965). We show below that the Board did not abuse its discretion in this case.

The record supports fully the Board's finding that "the Kansas Refined Helium plant is a well-defined manufacturing installation, self-contained and requiring only the continuous supply of raw material for operation" (A. 573). Thus, the plant was constructed, staffed, and put into operation by American Messer before being turned over to Angle as a functioning entity. The only significant relationship between the instant plant and the other Angle companies is that the raw gas which is the input to the plant's production process reaches the plant through the efforts of other Angle employees. Accordingly, the Board held in effect that the junction of the pipeline and the Company's plant is an appropriate place to separate the plant from Angle's other enterprises. The reasonableness of this determination is supported by the fact that the gas from some of Angle's wells is sold to a distributing company not connected with Angle, and in addition, that Angle's pipeline is not the only input of gas to the plant (A. 184, 187, 194, 209).

The plant is permanently staffed with sufficient operating and maintenance personnel to keep it in operation 24 hours a day, 7 days a week, and is under the immediate supervision of Production Manager Henry Tyler, an engineer trained in cryogenics, and Maintenance Supervisor John Stiff.[23]

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[23] The General Manager, Norman Klein, is also comptroller of all Angle companies, and accordingly is not continually at the plant or in touch with its daily operations. There is no evidence that he is trained in the technical aspects of the plant's operation. And Tyler testified that Angle, who is not an engineer, was unable to assist in solving the plant's operating problems (A. 119, 137, 141).

Contrary to Angle's contention, the work of Great Plains Drilling employees at the plant is insufficient both in nature and quantity to render a unit limited to employees of Kansas Refined Helium inappropriate. Between January 1, 1966, and August 3, 1967, driller Elmer Snyder worked at the plant 49 days, or 8% of the time. Between September 17, 1966, and August 5, 1967, driller Leo Baum spent 59 days (18%) at the plant (A. 429). Snyder testified that he worked at the plant "at different times," but never on a regularly scheduled basis (A. 201). Moreover, both assignments to the plant and instructions to return to Great Plains came from Great Plains drilling supervisor Kruger (A. 201, 202, 205). Finally, it should be noted that their services were not always available to the Company; both men testified that they worked at the plant only when there was no work for their drilling rigs (A. 201, 206).[24] Thus, the Company has failed to show interchange of employees between the plant and other Angle companies on a regular basis, or of such frequency to create a community of interest among these employees which would render the Board's limitation of the unit improper.

The Company also argues that, as a minimum, the unit must also include the two men assigned to Al Pesicka and known as pipeline riders. Pesicka is responsible for the condition of the pipeline gathering system and the day-to-day production of Angle's gas wells, and is under the supervision of the Great Plains Drilling supervisor, Kruger (A. 178-179). One of these men, Altha (John) Young, described his duties simply as "taking care of gas wells . . ." in his assigned area, including the wells whose production is sold to a non-Angle company (A. 193, 194-195). Essentially, the job consists of visiting the wells, determining from pressure and flow charts attached to meters at the wells whether they are functioning

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[24] Snyder testified further that, when his rig was idle, he would not go to the plant "if I wanted the time off" (A. 202).

properly, and making necessary adjustments (A. 194). The visits of these men to the plant – strongly relied on by the Company – fall short of compelling their inclusion in the bargaining unit. The only evidence on this point is the testimony of Young that "I generally have time in the morning before I go to work; I'll stop in at the plant and visit with some of the boys there and ask how the gas is holding up", and that "I stop in maybe twice a day to see how . . . our gas is coming in . . ." (A. 195, 196). This information is obtained by the plant operator from gauges on the control board and related to Young (A. 195-196). Young further testified that he does not have instructions to report to the plant and that his visits there were in no way concerned with its internal functioning (A. 196). Thus, the pipeline riders are no more intimately connected with the employees working at the plant than are employees of any independent supplier of materials. Their only contact with the plant is to ascertain whether the flow of gas from their wells is satisfactory. Accordingly, their inclusion is not necessary for a complete production and maintenance unit.[25]

B. The Union was validly designated as bargaining representative by a majority of the employees in the unit

Since, as shown *supra*, the Company's senior operators are not supervisors, the Board found that the unit contained 22 employees, and that by

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25 As the Trial Examiner noted, the inclusion of these two men in the unit has not always struck the Company with such importance as it does now (A. 576). At the hearing in the representation case, company counsel introduced a list of names (A. 428) which he stated to be "a list of the personnel connected with the helium plant operation" (A. 395). The pipeline riders are not included. As the Second Circuit recently observed in an analogous situation, the Company's earlier position is "particularly significant . . . If the matter were regarded as otherwise doubtful, the company's own position thus would tip the scale decisively against our upsetting the [Board's] decision" that the employees in question were properly excluded from the bargaining unit. *N.L.R.B. v. Olson Bodies, Inc.*, ___ F.2d ___, 73 LRRM 2202 (C.A. 2, 1970).

July 2, 18 of them had validly designated the Union as their bargaining representative (A. 588). The Company has challenged the validity of the authorization cards by alleging that they are ambiguous, that there were misrepresentations contained in union literature distributed to the employees, and on the basis of statements to card signers by the solicitors.

The Company's contention that the caption, "Membership Application" on the cards renders them ineffective as union authorization is wholly without merit. The text of the card – "I hereby accept membership in and designate and authorize the Oil, Chemical and Atomic Workers International Union, as my collective bargaining agent in all matters pertaining to wages, rates of pay and conditions of work" – squarely meets the Board standard that an unambiguous card is one which "states on its face that the signer authorizes the union to represent the employees for collective bargaining purposes and not to seek an election . . . ." *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 584 (1969), citing with approval *Cumberland Shoe Corp.*, 144 NLRB 1268 (1964), enforced, 351 F.2d 917 (C.A. 6, 1965).

The Company's contention that the literature distributed by the Union contained statements which invalidate the cards is similarly lacking in merit. A 20-page booklet titled "You're invited" was devoted principally to describing the advantages of union representation (A. 434-445). Two pages, headed "How do you organize" and containing a half-page illustration of people voting, describes organizing procedure – including signing "authorization cards" – filing a petition with the Board, and the holding of a representation election. The reader is also referred to the last page, which sets forth another form of authorization card. A reading of the entire booklet leaves no doubt of the alternate uses of the cards, i.e., either for an election or to obtain employer recognition of the union. Another pamphlet, containing 10 pages and titled "Look Out Below", mentions elections, but it is directed primarily at warning employees of

possible practices by employers during an organizing campaign (A. 446-452). Four other leaflets, introduced at the hearing by the Company, consist solely of recitations of benefits available through unionization (A. 453-456). Thus, we submit, the union literature, taken as a whole, does not misrepresent either the nature of the Board's election procedure or the uses of authorization cards. The Company makes no showing to the contrary.

The Company's brief to the Court makes the assertion that cards were obtained by solicitors on the basis of misrepresentations that they were for the purpose of obtaining an election. However, the Company makes no specific reference to cards claimed to be invalid. The Trial Examiner's decision contains a detailed analysis of the circumstances surrounding the signing of every card (A. 582-587). He found 18 valid designations of the Union, and, we submit, his decision reflects full compliance with standard for card solicitation approved in *Gissel Packing Co., supra*, 395 U.S. at 606-608. As this Court recently stated, "Since elections usually follow even when authorization cards are solicited, a representation that there will be an election does not of itself invalidate the cards." *Amalgamated Clothing Workers (McEwen Mfg. Co.) v. N.L.R.B.*, ____ U.S. App. D.C.____, 419 F.2d 1207, 1209 (1969). Finally, no merit whatever attaches to the Company's assertion in its brief that the "subjective intent of the signers is important" and that "testimony of employees concerning why they signed cards" should be allowed. In *Gissel Packing, supra*, the Court firmly rejected "any rule that requires a probe of an employee's subjective motivations as involving an endless and unreliable inquiry." 395 U.S. at 608.[26]

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[26] Since the Union had achieved majority staus and made known its desire for recognition and the commencement of bargaining, when the Company made its September (cont'd)

C. The Board properly ordered the Company to bargain with the Union

In *Gissel Packing Co., supra*, the Supreme Court sustained the Board's remedial authority to issue a bargaining order in a case such as the instant one, in which unfair labor practices have been committed "that interfere with the election processes and tend to preclude the holding of a fair election." 395 U.S. at 594. The Court indicated that in such cases, a bargaining order would be appropriate (1) where the employer's unfair labor practices are so "pervasive" and "coercive" that it is the only effective means of remedying those unfair labor practices, or (2) where the unfair labor practices, though less substantial, are nonetheless such that "the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order." 395 U.S. at 614. Moreover, the Court emphasized, "It is for the Board and not the courts . . . to make [the determination] whether the effects of the employer's unfair labor practices can be erased without issuance of a bargaining order, based on its expert estimate as to the effects on the election process of unfair labor practices of varying intensity." 395 U.S. at 612, n. 32. It is clear, we submit, that under the circumstances of this case, a bargaining order is appropriate under either of the standards enunciated above.

Here, as the Board noted, the Company responded to the prospect of unionization of its employees by "embarking upon an antiunion campaign

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26 (cont'd) 21 announcement of a general wage increase for all employees, the Board properly held that the Company's unilateral action constituted a refusal to bargain violative of Section 8(a)(5) and (1) of the Act. *N.L.R.B. v. Katz*, 369 U.S. 736; *Office and Professional Employees International Union, Local 425 v. N.L.R.B.*, ___U.S. App. D.C. ____, 419 F.2d 314, 321 (1969).

marked by massive and systematic violations of Section 8(a)(1) and (3) of the Act" (A. 615, n. 4). These violations, which included coercive interviews with every employee, threats of plant closure and discharge for union activity, and the discharge of six union supporters, the Board held, "were obviously designed to undermine the Union's support, destroyed the conditions necessary to the holding of a free election on the Union's petition, and made the holding of a fair election in the future unlikely" (*ibid.*). In the circumstances shown, the Board could properly conclude, as it did, that "in order to protect the statutory rights and interests of employees and to remedy the unfair labor practices committed, it is essential that the [Company] be ordered to recognize and bargain with the Union as the statutory representative of its employees for the purposes of collective bargaining" (*ibid.*). The Board's determination of this issue, we submit, satisfies the *Gissel* standard. See *Amalgamated Clothing Workers (McEwen Mfg. Co.) v. N.L.R.B., supra*, ____U.S. App. D.C. ____, 419 F.2d at 1209.

IV. SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE COMPANY SUSPENDED AND LATER DISCHARGED RODGERS IN VIOLATION OF SECTION 8(a)(3) AND (1) AND SECTION 8(a)(4) AND (1) OF THE ACT

Preliminary to the question of whether Sections 8(a)(3) and 8(a)(4) of the Act were violated by the suspension and discharge of Rodgers are two issues raised by the Company. First, there is no merit to the Company's contention that Rodgers, by virtue of his classification as a senior operator prior to his original discharge, remained a supervisor, and therefore the subsequent discrimination against him was not unlawful. As shown *supra*, however, the senior operators are not supervisors. In any event, it is clear from the record, and the Company admits, that after his reinstatement Rodgers was a trainee, with none of the indicia of supervisory

authority (A. 729; 619). The Company further argues that, since Rodgers' re-employment was effected under a temporary injunction issued by the District Court, its obligation to retain him expired on August 28, 1967, with the dissolution of the injunction by the Tenth Circuit (*supra*, p. 11, n. 6). But this seems to be a position reached through hindsight. In his October 2 letter of discharge, Angle stated (A. 743; 725):

> You are aware, of course, that since the decision of the Court of Appeals, I have had no obligation to continue your temporary reinstatement; however, I had made up my mind to continue your employment in the hope that you would straighten out after the contempt action was over, enter into the retraining program and become a good and qualified employee.

As the Board found, this letter "establishes the fact that Rodgers was retained as an employee after the District Court's injunction had been removed." (A. 746). Hence, there was no reason for him not to be entitled to the protection of the Act.[27]

Angle's letter to Rodgers, dated September 19, stated that he was being suspended, *inter alia*, for a "disturbance" during "emergency conditions" (A. 738; 721). Whether or not the plant was experiencing an emergency on the afternoon of September 19, there is no evidence in the record that Rodgers was advised of this. The credited testimony establishes that, in response to Rodgers' inquiry, Tyler said that he had time to speak with him and invited him into the office (A. 736, 747; 623-624, 706). Further indication that there was no emergency requiring Tyler's personal attention is

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[27] It should be further noted that since the initial discharge of Rodgers, along with five fellow employees, was in violation of Section 8(a)(3) and (1) of the Act, he has never lost the employee status that he had prior to that discharge. *N.L.R.B. v. Cape County Milling Co.*, 140 F.2d 543, 546 (C.A. 8, 1944); *N.L.R.B. v. Sifers*, 171 F.2d 63, 66 (C.A. 10, 1948).

his admission that after talking to Rodgers he called Angle twice that afternoon about his conversation with Rodgers, the first call lasting 10 to 15 minutes and the second longer (A. 747-748; 706-707). And it is clear that Rodgers' conduct at that time cannot be characterized as a "disturbance." When both men recognized that they were uncertain whether the Board notice had to be posted, Rodgers suggested that they take the action indicated on the notice and call the Board's regional office; Tyler agreed. When Rodgers was ready to make the call and again sought permission, Tyler changed his mind. Rodgers did not argue with Tyler, but merely attempted to clarify his statement by asking two questions, and then returned to work. This surely does not, as Angle claimed in his letter, rise to the significance of an attempt to "dictate to Mr. Tyler what is to go on the bulletin board or anything else with respect to the operation and maintenance of this plant and its personnel" (A. 738; 721). Thus, it is clear that the reason stated by Angle in the letter of suspension is unsupported by the record, but was raised as pretext to conceal the true reason, which was Rodgers' honest attempt to find out whether, and in what respect, the Company would comply with the order contained in the Trial Examiner's decision.

In the letter of discharge sent to Rodgers after his suspension, Angle went to great lengths to set out the employee's alleged misdeeds (A. 739-745; 722-726). Angle implied that there was something wrong with Rodgers' presence at the plant on Saturday September 16, but his letter did not state that Rodgers should not have been there; nor did it indicate any impropriety in the conversation that Rodgers had with other employees. Rodgers had never been told that the plant was closed to off-duty employees, and he had seen others there on their days off "a good many times," sometimes bringing their families with them (A. 631). Further Rodgers' conversation with the other employees concerning the Trial

Examiner's decision and the posting of the notice was clearly proper. The decision and order affected every employee of the Company, and the Board properly found that the employees' discussion of the matter was protected concerted activity. See *N.L.R.B. v. Washington Aluminum Co.*, 370 U.S. 9 (1962); *Walls Mfg. Co. v. N.L.R.B.*, 116 U.S. App. D.C. 140, 321 F.2d 753 (1963), affirming following remand, *sub nom. International Ladies' Garment Workers Union v. N.L.R.B.*, 112 U.S. App. D.C. 20, 299 F.2d 114 (1962).

Next, Angle alleged that Rodgers "must have given untruthful accounts of the value and nature of the reorientation program" and "deliberately set out to give false reports and help build a case of contempt against me which was not justified by the facts" (A. 740, 741; 723). This charge, too, is unsupported by the record. In attempting to demonstrate that Rodgers supplied false information to Board agents, Company counsel quoted a statement by a Board attorney from the transcript of a conference before the United States District Court for the District of Kansas which was held on August 14, 1967. The statement was as follows (A. 678):

> We talked to Mr. Rodgers . . . last week several times, the middle of last week, and as of that date Mr. Rodgers is still being retrained. He hasn't been made a senior operator, has been kept essentially in a room, although once in a while they take him out and show him what is at the plant, but he has made an object lesson of the employees that you are not reinstated but rehired. Yes, not reinstated in accordance with the Court's order. From all indication he may be retrained forever at the present inclination.

August 14, 1967, was a Monday, and "the middle of last week" would have been approximately August 9, 1967. As shown, *supra*, for three days after his reinstatement, Rodgers was instructed to color flow charts in Harms' office, having been given permission to leave that room only to get coffee. At the end of the third day, he was given permission

to go into the plant. However, he was also instructed to answer numerous essay questions given him by Tyler, and, accordingly, except for the occasions on which he was examining equipment in order to answer the questions, he was still confined to Harms' office, since he had been told to write his answers there. After coloring the charts, Rodgers spent between two and three weeks answering the questions. August 9 was exactly three weeks after Rodgers returned to work. Thus, at the time referred to in the statement quoted above, Rodgers was, by following Tyler's instructions, "kept essentially in a room . . ."

Angle also appears to place exclusive blame for the institution of contempt proceedings on Rodgers. But the contempt petition was filed on July 20, 1967 (A. 620) – the day after he returned to work – at which time he was able to leave Harms' office only to get coffee. And the Company does not dispute the statement of the Board attorney at the hearing in this matter that Rodgers' treatment after his reinstatement "is a very small part of the contempt proceedings" (A. 621). Moreover, it is clear that Rodgers' alleged falsification of information in the contempt proceedings was not the basis for his discharge, for Angle's letter indicated that notwithstanding the dissolution of the injunction as it affected Rodgers, Angle had decided to continue his employment. Thus Angle admitted in effect that he was not discharging Rodgers for his conduct related to the contempt proceedings.

Angle's next purported reason for discharging Rodgers is the fact that he recorded events at the plant in a notebook. Rodgers admitted this (A. 635). But the Company has not indicated – either in the letter or at the hearing – what was wrong with this, except that Rodgers made entries in the book during working hours. Nevertheless, there is no evidence showing that keeping the notebook violated any plant rule or that it disrupted operations (A. 748).

It is thus seen that Angle's accusations of misconduct by Rodgers are wholly unsupported by the record. And as the Board found, what is left of the letter reveals Angle's true motive in again discharging Rodgers. Angle asserted that (A. 742; 725):

> . . . in the latest N.L.R.B. hearing, although subpoenaed as a witness by the government, you were not called upon to testify, but instead sat beside the government lawyer and transmitted information to him from which to examine and cross-examine other employees in the plant. I could understand this and even overlook it, but your fellow employees resented it and I can understand their attitude as well.

In other words, as Angle makes clear, at least part of his motivation in discharging Rodgers was the latter's appearance under subpoena at the hearing. It is well settled, as the Board stated: "Employees are protected from discharge for this reason by virtue of Section 8(a)(4) of the Act" A. 749). See *N.L.R.B. v. Automotive Controls Corp.*, 406 F.2d 221, 225 (C.A. 10, 1969); *N.L.R.B. v. American Art Industries*, 415 F.2d 1223, 1228 (C.A. 5, 1969), cert. denied, March 23, 1970, 38 U.S.L.W. 63, 70; *Nachman Corporation v. N.L.R.B.*, 337 F.2d 421, 422-424 (C.A. 7, 1964); *Pratt & Whitney Aircraft Division v. N.L.R.B.*, 310 F.2d 676, 679 (C.A. 5, 1962).

V. The Union's Challenge to the Board's Order is Without Merit

Section 10(c) of the Act authorizes the Board to order the perpetrator of an unfair labor practice "to cease and desist from the unfair labor practice and to take such affirmative action . . . as will effectuate the policies of the Act." The Board's broad discretionary power to fashion appropriate remedies has long been recognized, and its order in a particular case "will

not be disturbed 'unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act.' " *Fibreboard Paper Products v. N.L.R.B.*, 379 U.S. 203, 215-216 (1964), quoting *Virginia Electric Power Co. v. N.L.R.B.*, 319 U.S. 533, 540 (1943); and see *N.L.R.B. v. Seven-Up Bottling Co.*, 344 U.S. 344, 346 (1953); *Phelps Doge Corp. v. N.L.R.B.*, 313 U.S. 177, 194 (1941).

In the instant case, the Board, as part of its order against the Company, imposed the usual remedy in discrimination cases of reinstatement with backpay, less interim earnings. The Union, asks for more, however. It argues that the "egregious" and "repetitive" nature of the Company's violations calls for an extraordinary remedy, i.e., that the six discharged employees should be awarded full backpay without deduction of interim earnings. In addition, the Union urges that in view of the "unusual hostility" which Angle displayed toward the discriminatee, Rodgers, and the "unusual harrassment" that he suffered during the period of his first reinstatement, he should not be forced to return to his job if he is unwilling to do so, but that the Board's order should give Rodgers an option to decline reinstatement and continue receiving backpay until he finds substantially equivalent employment. The Union made these same contentions before the Board, and having been unsuccessful there, now asks the Court to compel the Board to provide these remedies.

The Union's contentions should be rejected, however, for they fly in the face of the principle stated by this Court in *Amalgamated Clothing Workers (Hamburg Shirt Corp.) v. N.L.R.B.*, 125 U.S. App. D.C. 275, 281, 371 F.2d 740, 746 (1966) that:

> The Board's power to fashion remedies places a premium upon agency expertise and experience, and the broad discretion involved is for the agency and not for the court to exercise. We cannot insist that the

> traditional relief provided here will be so ineffective to enforce the policies of the Act as to be insufficient as a matter of law.

Accord: *International Brotherhood of Electrical Workers (Presto Mfg. Co.) v. N.L.R.B.*, ____U.S. App. D.C. ____, 417 F.2d 1144, 1148 (1969).

The Board's order here contains the traditional reimbursement remedy which has been applied in countless Board cases involving discrimination. The Union bases its request for a stronger remedy on the seriousness of the employer's unfair labor practices. However, it is beyond the Board's power to issue a punitive order. The deduction of interim earnings to arrive at the backpay due an employee obviously results in reimbursing him by an amount which bears a rational relationship to the monetary injury suffered by him. Acceptance of the Union's argument, on the other hand, would require recognition of various additional intangible injuries suffered by a discriminatee and the arbitrary assignment to them of a dollar value equal to the individual's interim earnings. Since, under such a procedure, the measure of reimbursement would bear no real relationship to the alleged injury suffered, it would be a departure even from the normal principles of damages recognized in other areas of law.[28]

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[28] In this respect the Union's claim is distinguishable from the make-whole remedy considered by this Court in *International Union of Electrical Workers (Tidee Products) v. N.L.R.B.*, Nos. 22797, 22911 decided April 3, 1970. In its opinion, the Court there discussed the reimbursement of employees in an ascertainable amount as determined by the contract terms that would have been in effect if the employer had complied with his statutory bargaining obligation.

CONCLUSION

For the foregoing reasons, the Board respectfully submits that the petitions for review should be denied and that a judgment should issue enforcing the Board's orders against the Company.

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May 1970.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 23,295 and 23,300

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY, *Intervenor.*

Nos. 23,750 and 23,751

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Petitions to Review and a Cross-Petition to Enforce Decisions and Orders of the National Labor Relations Board

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REPLY BRIEF FOR OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO

United States Court of Appeals
for the District of Columbia Circuit

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In its brief to this Court, the Board defends its failure to grant the additional relief sought by the Union on three grounds. First, it emphasizes the broad discretion which the Act confers on the Board in the remedy area. Second, it stresses the fact that the remedy which it did grant here is "the traditional reimbursement remedy which has been applied in countless Board cases involving discrimination." Finally, it suggests that the Union's request for a "stronger remedy," since it is based in part on the flagrant nature of

the employer's violations, amounts to a request for "punitive" relief which is beyond the Board's power to grant.

These same arguments were presented in defense of the Board's order in another case recently decided by this Court, *International Union of Elec. Workers v. NLRB (Tiidee Products, Inc.)*, Nos. 22,797, 22,911 (April 3, 1970). In that case, the Union sought a remand of a Board decision on the ground that the Board had failed to give an adequate explanation for its failure to award any form of make-whole relief for an employer's "clear and flagrant" refusal to bargain. This Court granted the remand, rejecting precisely the same contentions which the Board again relies on in the present case.

Although the Court in *Tiidee Products* recognized that the Board has broad discretion to fashion appropriate remedies, it held that the Board must *exercise* that discretion and give reasons for its decision:

> "There is a presumption that favors the Board, with its expertise, in its selection of remedies . . . . That presumption is given full effect when the Board makes a conscious selection of remedies to effectuate the Act, provided reasons for its conclusion are stated or may fairly be discerned. That is not the situation in the case before us. The Board's silence on a substantial question raised by the Union is not sanctified by the circumstance that it was being passive rather than affirmative." (Slip Op., p. 11.)

The Court also held that the Board's decision could not be sustained simply on the basis that the remedy which the Board had granted was the customary one in refusal-to-bargain cases:

> "The Board's assumption seems to be that application of a uniform remedy stills all legal doubts. But it is as old in philosophy at least as Aristotle, and it is settled in the law as well, that the application of an apparently uniform rule may in reality engender unfair discrimination when like measures are applied to unlike cases." (Slip Op., p. 12.)

Finally, this Court's decision in *Tiidee Products* clearly holds that the egregiousness of an unfair labor practice is a valid consideration to be taken into account in framing a remedy:

> "Assuming the general validity of a purely prospective type of order, the case of brazen refusal to bargain, in violation of solemn obligations, presents special considerations. (Slip Op., p. 9.)
>
> * * *
>
> "If it be assumed *pro tem* that there are considerations precluding the development of a truly meaningful remedy in cases where the employer's failure to bargain rested on a debatable question, this would not preclude a meaningful remedy for a manifestly unjustifiable refusal to bargain like that involved in the case at bar." (Slip Op., p. 12.)

Although the remedy sought by the Union in the present case is different than the one at issue in *Tiidee Products*, the principle of that case is equally applicable here. That principle is that the Board cannot reject, without consideration or discussion, a remedy proposal which appears on its face to have substantial merit. As we demonstrated in our principal brief, the remedies proposed by the Union in this case would come much closer to providing adequate compensation to the injured employees than the "traditional" remedies provided by the Board. In these circumstances, the teaching of *Tiidee Products* is that the Board must at least consider the proposed remedy—no matter how novel

or unprecedented it may be—and give reasons for its decision. Since the Board failed to do so here, this case must be remanded for further consideration of the remedy issues.

Respectfully submitted,

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ON PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

REPLY BRIEF OF PETITIONER (INTERVENOR)

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REPLY BRIEF OF PETITIONER (INTERVENOR)

This Brief is filed by Petitioner (Intervenor) George A. Angle, d/b/a Kansas Refined Helium Company, hereinafter referred to as the "Company," in response to the

Briefs of the National Labor Relations Board and the Union. Its discussion centers primarily upon the questions of the supervisory status of the Senior Operators and the effect of the 10(j) Injunction entered against the Company.

SUPERVISORY STATUS OF SENIOR OPERATORS

The National Labor Relations Board has concluded that Senior Operators are not supervisors. The Board states that determination of supervisory status is an area of its expertise and that its determination is to be accepted if it has "warrant in the record" and a "reasonable basis in law." (See page 22 of the Board's Brief and cases cited therein.) The Company submits that there is neither warrant in the record nor a reasonable basis in law for the Board's conclusion. Accordingly, the Board's decision that Senior Operators are not supervisors should be set aside for the following reasons:

A. The Board's Ruling Is Not Supported by Substantial Evidence

The Courts have long held that the Board is to be reversed if the record does not contain substantial evidence to support its holding. (*Universal Camera Corp.* v. *NLRB*, (1951) 340 U.S. 474). This rule was reaffirmed in one of the cases cited by the Board as authority for its decision herein, as follows:

> "We are aware that, despite such judicial deference to Board expertise, we must reverse the Board if the record does not contain substantial evidence to support its holding." (*NLRB* v. *Security Guard Service, Inc.*, 384 F.2d 143, CA 5, 1967).

A review of the Board's Brief reveals that it erroneously contends the Company relied principally on two elements of evidence to show the supervisory status of Senior Operators, i.e., authority "effectively to recommend rewards" and "discipline." In fact, the evidence which was presented and relied upon by the Company concerns not only these two elements, but also involves the Senior Operators' authority to "assign" and "responsibly to direct other employees" or "effectively to recommend" any of such actions. Several factors were established by the Company to show such supervisory authority. While honest minds might differ concerning the importance of some of these factors (such as a pay differential of from 45 to 85 cents per hour between Senior Operators and their subordinates), *the clear conferral of supervisory authority set forth in Company Notices, together with the absence from the plant of any managerial authority other than the Senior Operators for over 2/3rds of the time the plant was operating, is not subject to dispute.* The failure of the Board to accept these factors (particularly the Notices conferring supervisory authority and the Senior Operators' exercise of such authority) as substantial evidence showing the supervisory status of the Senior Operators is an abuse of the Board's prerogatives and should be set aside. (*See NLRB* v. *Security Guard Service, Inc., supra*).

These Company notices—*which were prepared and posted long before there was any dispute on this issue*—clearly reflect the supervisory authority of the Senior Operators *who were left in control of the plant for two out of every three hours of the week.* For example:

Exhibit R. 20 (A. 483) (10/4/65) states *the Senior Operator will be informed and supervise the personnel on his shift.*

Exhibit R. 19 (A. 482-83) (1/5/66) shows that the Senior Operators are "*responsible*" for their shift and "*in the near future he will have the full responsibility of plant operation during his shift.*"

Exhibit R. 16 (A. 481) (2/2/66) shows that the new Senior Operator, Jim Ham, is "*to run the fourth shift.*"

Exhibit R. 18 (A. 482) (2/5/66) states that "*each supervisor will approve employees' time cards . . . senior operators will approve employees under their supervision.*"

Exhibit R. 21 (A. 484) (2/14/66) was directed to "all senior operators" as well as the other two management people Tyler and Stiff, and related to "*supervisors investigation reports.*"

Exhibit R. 22 (A. 485) (3/6/66) states that "*the senior operator shall follow up these instructions and see that his employees take care of this.*"

Exhibit R. 23 (A. 486) (4/25/66) gives "*All Senior Operators of KRH*" authority to call out instrument men when needed. [Emphasis added].

Notwithstanding the clear statement of authority contained in these Notices, the National Labor Relations Board characterizes such publications as "merely" (or "purely") "conclusionary" and concludes that there is an "absence of evidence of clear conferral of power." (See page 26 of the Board's Brief). To reach such a conclusion, the Board must ignore the clear intent and power spelled out in these Notices. True, they were not drafted by sophisticated grammarians, *but statements that Senior Operators will*

"supervise the personnel" on their shift and "run the fourth shift" and "see that [their] employees take care of" certain items, cannot in good conscience be defined as an "absence of evidence" of supervisory authority.

The Board's conclusion seems to be based upon an alleged lack of "kinship" and "empathy" between the discharged Senior Operators and the Company (citing *NLRB* v. *Security Guard Service, Inc., supra*). Following this logic to its ultimate conclusion would indicate that any supervisor could negate his status by simply diverting his empathic relationship and necessary kinship from the Company to the Union. Obviously, this is not the law. Prior to 1947, the Board had ruled that supervisors were subject to Union organization. Hearings on the Taft-Hartley Amendment emphasized the dangers of such action. It was pointed out that employees were entitled to be free from domination or control by their supervisors in their organizing and bargaining activities. And of equal importance, the employer was entitled to loyal supervision not subject to influence or control of Unions. (House Report, 80th Congress, First Session, pages 13-17).

The instant case is a prime example of the loss which both the employees and the Company can suffer when disloyal supervision transfers its allegiance from its employer to the Union and covertly solicits and leads employees under their influence and control into Union organization. It is clear that certain of the Senior Operators had no empathic relationship with the Company, as shown by the pilfering of management desks and briefcase, the institution of an unfounded criminal contempt action against

management, and other disrupting and self-serving tactics. But such lack of empathy does not change their status from a supervisory to a non-supervisory role. Instead, it simply subjects such supervisors to discharge without violation of the Act. (See page 21 of the Board's Brief). Such action is necessary in order to insure that companies will receive the loyalty of their supervision.

Protection of employees under these circumstances is a more difficult matter. Disloyal supervisors who wish to bring about unionization of their company can exert strong and improper influence upon rank and file employees—particularly when they have the responsibility and control of employees for long periods in the absence of any other managerial authority, as was true in the instant case. The Board has long held that involvement of supervisory personnel in the organizing effort, including their solicitation of authorization cards from employees, taints the Union's purported majority status. (See *Setco Well Service Co.*, 171 NLRB No. 54 (1968); *Thomas Spring & Mfg. Corp.*, 172 NLRB No. 67 (1968)). As a result, the Board's order that the Company begin bargaining with the Union without an election is invalid and should be set aside upon a finding that the Senior Operators are, in fact, supervisors.

B. The Board's Ruling Is Based Upon a Minority Opinion

The Board's conclusion that the Senior Operators are not supervisory is based upon two legal conclusions:

1. The existence of one or more of the functions for definition of supervisors listed in the statute is not determinative; instead, Section 2(11) of the Act

should function as a guide rather than a check sheet (citing this Court as authority in *Food Store Employees Union Local 347 (G. C. Murphy Co.)* v. *NLRB*, decided June 3, 1961, 71 LRRM 2397, 2400, and cases cited therein as set forth at page 28 of the Board's Brief).

2. It is the *exercise* rather than *existence* of authority which is determinative in deciding whether or not an individual is a supervisor (citing *NLRB* v. *Security Guard Service, supra;* see page 27 of the Board's Brief).

The cases decided by this Circuit and cited by the Board above are a *minority* rule and contrary to the long-standing majority rule which has been followed for many years in most other Circuits. The leading case setting forth the majority rule is *Ohio Power Co.* v. *NLRB*, 176 F.2d 385, 6 CA (1949). This case was discussed extensively by the Company in its original Brief in view of the extraordinary similarity between the facts in that case and the instant case, as well as its clear statement of the majority rule contrary to the minority rule adopted by the Board as set forth above. In substance, this *majority* rule holds:

1. Section 2(11) of the Act must be interpreted in the *disjunctive*, and the possession of any *one* of the powers set forth in Section 2(11) proves supervisory status.

2. Section 2(11) of the Act does not require the *exercise* of the powers therein described; rather, it is the *existence* of one or more of the powers which renders an individual a supervisor within the Act.

Many other Circuits have followed the majority rule in one or both of the above aspects. Some of the cases

from various Circuits which have adopted this majority rule are as follows:

1 CA (1952), *NLRB* v. *Leland-Gifford Co.*, 200 F.2d 620;

2 CA (1968), *NLRB* v. *Metropolitan Life Ins. Co.*, 405 F.2d 1169;

3 CA (1964), *West Penn Power Co.* v. *NLRB*, 337 F.2d 993;

5 CA (1967), *NLRB* v. *Security Guard Service, Inc.*, 384 F.2d 143;

7 CA (1965), *NLRB* v. *Elliott-Williams Co.*, 345 F.2d 460;

8 CA (1964), *Matthews & Co.* v. *NLRB*, 354 F.2d 432;

9 CA (1960), *NLRB* v. *Fullerton Publishing Co.*, 283 F.2d 545.

In view of the fact that at least eight of the Circuits accept the majority rule, the Company respectfully requests this Court to reject its minority position and hold the Senior Operators to be supervisors within the Act. If the Court declines to do so, the Company respectfully requests that the Court clearly reaffirm its adherence to this minority rule, in order that the conflict between the Circuits may be squarely presented to the United States Supreme Court, if the facts warrant.

EFFECT OF THE 10(j) INJUNCTION

The 10(j) Injunction is an extraordinary remedy. Because of the Board's use of this remedy in the instant case, its refusal to bargain order, the unique remedies requested by the Union, and the second Rodgers case are not appropriate, as set forth below:

A. Gissel Does Not Authorize a Refusal to Bargain Order When a 10(j) Injunction Has Previously Been Granted to Preserve and Restore the Status Quo

The United States Supreme Court, in *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575, has reaffirmed the desirability of using the election process to determine whether or not employees want union representation. However, the Court has approved the use of representation cards as a less desirable alternate method when a majority of employees have signed such cards "without misrepresentation or coercion" and the election process has been thwarted by substantial employer unfair labor practices.

In the course of its opinion, the Supreme Court acknowledges that the Board may use *either* traditional remedies (including a 10(j) injunction) to protect the election process *or* a bargaining order based upon authorization cards, as it states:

> "If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue."

But the Supreme Court does not give the Board the right to use the traditional remedies such as a 10(j) injunction and also grant a bargaining order!

The purpose of allowing the Board to use the less desirable bargaining order rather than an election in certain cases was because:

> ". . . perhaps the only fair way to effectuate employee rights is to re-establish the conditions as they existed before the employer's unlawful campaign."

In the instant case, however, the election process had been protected through traditional means and employee rights had been re-established shortly after the commission of the alleged unlawful Company actions through the issuance of a 10(j) Injunction. The Board made it clear in its Petition to the District Court that the purpose of the injunction was to protect the election process. (See pages 66 and 67 of Company Brief). The Injunction was issued accordingly. On appeal, the Tenth Circuit specifically approved such use of the 10(j) Injunction and after commenting at some length on the necessity for such an order, the Circuit Court concluded:

> "Preservation and restoration of the status quo are then appropriate considerations in granting temporary relief pending determination of the issues by the Board."

Thus, it seems apparent that the Board, under *Gissel*, could have elected to insure a fair election by the use of traditional remedies (including the 10(j) Injunction) or issue a bargaining order based upon authorization cards. Since it chose the former and the employees' rights were protected, the more desirable election process was appropriate rather than the more unreliable bargaining order based upon authorization cards.

The Company submits, therefore, that the bargaining order should be set aside and the election conducted as originally requested.

B. The Union's Request for a New and Unique Remedy Is Improper

The Union contends that a net backpay remedy is inadequate and asks that the Board institute the new and unique remedy of assessing backpay without deducting interim earnings. In support of its position, the Union states that loss of employment was a humiliation; the Supreme Court has already allowed the Board to assess interest and ignore unemployment compensation in computing backpay; and the traditional cease and desist order entered four years after the event is insufficient.

It has been the historic policy of the Act as interpreted by the Supreme Court to deduct interim earnings in computing backpay. (See *NLRB* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937)). The Union attempts to use two instances in which the basic backpay rule has been strengthened to insure that the employee has been made whole (through the allowance of 6% interest and the failure to deduct unemployment compensation on the basis of public policy) to vault itself into an entirely new theory. Under the rule proposed by the Union, the Company would be punished and the employee made more than whole by ordering the Company to pay full backpay without deduction of interim earnings. The Union cites only two cases allegedly supporting its position, neither of which appear appropriate. The history of the Act indicates that the employee is only to be made whole for loss of pay, not for such factors as humiliation, distress, etc.

In order to buttress its argument, the Union contends that the traditional relief is too late, coming some four

years after the event. This contention ignores the 10(j) Injunction entered in this case shortly after the commission of the alleged unlawful acts by the Company. In essence, the argument of the Union suggests that the 10(j) Injunction was meaningless. The facts completely negate such a contention. The employees were offered reinstatement, including travel pay, at the very outset of this case under the 10(j) order entered by the United States District Court and affirmed by the Tenth Circuit. Despite the Union's broadside attack on Angle, attempting to paint him as a tenacious, vitriolic employer who fails to abide by statutes or court orders, the facts indicate that the issues in dispute happened at a single time in September, 1966, and that *there has not been one instance of any kind since in which the Company has in any way, either by its owner, Angle, or any other party, discriminated against any employee or violated the Court's order!* In this regard, it is interesting to note that the Board, after having received a "blanket" cease and desist order from the United States Federal District Court, retreated to its own friendly administrative tribunal to "retry" the second Rodgers case. We submit that the Board was without jurisdiction to determine whether or not Rodgers had been properly terminated under a District Court order; instead, it was up to the Court to determine whether or not its order, including the reinstatement and later termination of Rodgers, was proper or improper.

C. The Union's Request That the Board Failed to Give Proper Consideration to Its Requested Remedy Is Improper

The Union complains about the lack of specific denial of its requested remedies. It appeared early in the proceedings that the Union and originally a member of the General Counsel's staff were attempting to penalize the Company rather than simply obtain remedial action. The Trial Examiner, referring to the new and unique remedy requested originally by the Union and the General Counsel, stated:

> "The record does not show Respondent ever to have previously violated the Act - - - much less that he has been so persistent a violator that only by so drastic a remedial measure as that sought by the General Counsel herein could the purposes of the Act be effectuated. The proposal to eliminate, at this stage, the usual offset of interim earnings seems to me much closer to a punitive than a remedial measure. Punitive measures have not been considered authorized by the Act and I shall not recommend this one." (A. 554).

This vindictive stance by Mr. Wacknov, the original Regional Counsel for General Counsel, was harshly criticized by the Trial Examiner, as he stated:

> "TRIAL EXAMINER: You know, Mr. Wacknov, I have some serious question as to some of your procedural conduct. You could see that I did not want that conversation identified in public. We have not identified it and you proceeded to do so."
>
> . . .

"It is purely vindictive to throw something at Angle now."

. . .

". . . I want to tell you very frankly that it was unnecessary on your part to throw that into the motion. It was irrelevant and I thought it was vindictive." (T. 2d, 104-105).

It was this type of procedure and unwarranted conduct resulting in the filing of the unfounded criminal contempt action against Angle which ultimately resulted in the apology by the Board's Washington attorney, Mr. Mestel, to the Company attorney. The Board was well aware of the contentions being made by the Union as the Union and the General Counsel worked jointly through repeated hearings and proceedings. The record was clear as to the punitive nature of the remedy which the Union sought. It was not appropriate under the Act and it would have been improper for the Board to have granted the same. Even under cases cited by the Union, it is necessary that the relief being requested be a "remedy" and also that it be "truly meaningful." The relief requested by the Union is punitive rather than remedial and not meaningful within this context.

The Board had instituted a unique remedy in the instant case by filing the first 10(j) Injunction proceedings in the history of the Seventeenth Region. The rights of the employees were fully protected and the claim of the Union for new and unique relief is without merit.

CONCLUSION

The Company requests that the Senior Operators be declared supervisors; the bargaining order issued by the Board herein be set aside; the discharges of the employees and particularly the Senior Operator supervisors be upheld; and that the Complaint be dismissed, and for all other relief previously requested herein.

Respectfully submitted,

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Nos. 23,295, 23,300; 23,750 and 23,751

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 23,295, and 23,300

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*,

and

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY, *Intervenor*.

Nos. 23,750 and 23,751

GEORGE A. ANGLE, d/b/a KANSAS REFINED HELIUM COMPANY, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

On Petitions for Review and Cross-Application for Enforcement of Orders of the National Labor Relations Board

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REPLY BRIEF OF THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 14 1970

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On Petitions for Review and Cross-Application for Enforcement of Orders of the National Labor Relations Board

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REPLY BRIEF OF THE NATIONAL LABOR RELATIONS BOARD

This reply brief in response to the Company's reply brief is filed by the Board pursuant to leave granted by the Court on July 23, 1970.

I.

The Company is wholly mistaken in its contention that there is a so-called "minority rule" which it accuses this Court of following in inter-

preting Section 2(11) of the Act. Contrary to the Company's assertion, *Food Store Employees Union, Local 347 v. N.L.R.B.*, ___ U.S. App. D.C. ___, 422 F.2d 685 (1969) does not support its contention. There, the Court emphasized that in determining whether an individual is a supervisor, "the finely-shaded gradations of power in any enterprise proscribe a wooden reading of Section 2(11)." 422 F.2d at 690. It is unlikely that any court would disagree with that statement.

Although, as the Company notes, courts of appeals frequently cite the early decision in *Ohio Power Co. v. N.L.R.B.*, 176 F.2d 385 (C.A. 6, 1949), cert. denied, 338 U.S. 899 and often mention or quote the language of that opinion, a reading of the decided cases does not reveal the simplistic division between a "majority" rule and "minority" rule, suggested by the Company. Rather, each case is considered on the basis of its own facts, and what is revealed is a tendency by all courts to follow an approach much like the one advocated by this Court in the *Food Store Employees* case. This is confirmed even by the cases relied on by the Company (Reply br. p. 8).

Thus, in *N.L.R.B. v. Leland Gifford Co.*, 200 F.2d 620, 625 (C.A. 1, 1952), although the court cites *Ohio Power* for the proposition that the "existence" of any one of the powers set out in Section 2(11) establishes supervisory status, the court goes on to hold that it does not consider that the "mere existence in theory only of a power described in the statute is enough to make a 'supervisor' ". In that case, the individuals in question were not performing supervisory functions at the time of the unfair labor practices, due to a temporary reduction in their employer's orders which had caused a reduction in the work force. However, the court specifically found that they had exercised supervisory authority in the past and were expected to do so again.

Other decisions similarly recognize that supervisory authority does not exist in a vacuum. *Ohio Power* is frequently cited by the courts, because it provides a useful legal analysis of Section 2(11). That case, however, does not answer the question of when supervisory authority actually exists. To answer that question, as the *Leland Gifford* case exemplifies, the courts are not satisfied with a theoretical grant of authority, but rely on evidence of the exercise of authority as proof that it exists. Other cases cited by the Company are illustrative: They recognize that to meet the statutory test, it is not necessary that there be "constant and continuous utilization" of supervisory power (*N.L.R.B. v. Fullerton Publishing Co.*, 283 F.2d 545, 550 (C.A. 9, 1960)), or that it be used "during any definite part of the employee's time." *West Penn Power Co. v. N.L.R.B.*, 337 F.2d 993, 996 (C.A. 3, 1964). The Company would apparently choose to ignore the fact that in both the *Fullerton Publishing* and *West Penn* cases, the courts found the actual exercise of supervisory power. Further, in the latter case the Third Circuit also relied on *Local 636, Plumbers v. N.L.R.B.*, 109 U.S. App. D.C. 315, 287 F.2d 354 (1961), and found that the duties of the position in question were "more related to managerial and company functions than to those of ordinary employees." 337 F.2d at 996.

The other cases cited by the Company[1] likewise provide no support for its "majority-minority rule" characterization. In each of the cases, the individuals in question were found to be supervisors on the basis of actual exercise of one or more of the powers set forth in Section 2(11). Even in *N.L.R.B. v. Security Guard Service*, 384 F.2d 143 (C.A. 5, 1967),

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[1]*N.L.R.B. v. Metropolitan Life Ins. Co.*, 405 F.2d 1169 (C.A. 2, 1968); *N.L.R.B. v. Elliott-Williams Co.*, , 345 F.2d 460 (C.A. 7, 1965); *Jas. H. Matthews Co. v. N.L.R.B.*, 354 F.2d 432 (C.A. 8, 1965), cert. denied, 384 U.S. 1002.

where the court sustained the Board's finding that an individual was not a supervisor. which causes the Company to imagine that the Fifth Circuit follows the "minority rule," the court relied for its analysis on the *Ohio Power* decision. The court also cited (384 F.2d at 148) *International Union of United Brewery, etc. Workers v. N.L.R.B.*, 111 U.S. App. D.C. 383, 389, 298 F.2d 297, 303 (1961), cert. denied, *sub nom. Gulf Bottlers v. N.L.R.B.*, 369 U.S. 843, for its holding that an employee does not become a supervisor unless he possesses "real power 'in the interest of the employer' to take meaningful action with respect to the statutory tests." The Fifth Circuit also relied on *N.L.R.B. v. Southern Bleachery & Print Works, Inc.*, 257 F.2d 235, 239 (C.A. 4, 1958), cert. denied 359 U.S. 911, where, speaking of supervisory status, the court said: "The important thing is the possession and exercise of actual supervisory duties and authority and not the formal title."

In sum, not only do the authorities fail to support the Company's "majority-minority" classifications but they do not sustain the rigid reading of the *Ohio Power* decision advocated by the Company. A typical case is the recent decision in *N.L.R.B. v. Magnesium Casting Co.*, No. 7462, decided May 21, 1970, 74 LRRM 2234 (C.A. 1), where the court held that when the matter of supervisory authority is put in issue and it is necessary to determine if it is possessed, "lack of exercise thereof is one factor in determining whether or not the authority is indeed possessed." 74 LRRM 2236, n. 2. In light of the foregoing, we submit, the Company's attack on the Board's finding in the instant case that the senior operators are not supervisors, and its further attempt to discredit this Court's past decisions dealing with the supervisory issue are wholly unwarranted and without merit.

II.

There is no substance to the Company's contention that the Board's order requiring it to bargain with the Union upon request is inappropriate, because the Board, under the authority of Section 10(j) of the Act, previously obtained from the District Court a temporary injunction against violations of Sections 8(a)(1) and (3) of the Act while the proceeding was pending before the Board. The Company claims to find support for its position in a sentence from the Supreme Court's opinion in *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575 (1969), at pp. 614-615. Even assuming the argument could be said to have merit, which as we show below, it has not, it is clearly untenable on the facts of this case, because the whole basis for one of the two proceedings before this Court is the Board's finding that the Company violated Sections 8(a)(3) and (4) of the Act by discriminating against employee Rodgers, following his reinstatement pursuant to the Section 10(j) injunction.

In any event, the Company argument stems from a misconstruction of the *Gissel* opinion. The Supreme Court was well aware of the choice of remedies available to the Board in any given case. Indeed, the employers in *Gissel* argued, much as the Company does here, that a bargaining order should not be imposed where other remedies are available. Rejecting this reasoning, the Court stated (395 U.S. at 612):

> Such an argument ignores that a bargaining order is designed as much to remedy past election damage as it is to deter future misconduct. If an employer has succeeded in undermining a union's strength and destroying the laboratory conditions necessary for a fair election, he may see no need to violate a cease-and-desist order by further unlawful activity.

The Section 10(j) injunction obtained by the Board required the Company to do no more than is required of it under the order issued following adjudication before the Board. To accept the Company's argument that a bargaining order is foreclosed because of the Section 10(j) injunction would be to foreclosed such an order in every case where other remedial provisions are applied. However, as we have seen, the *Gissel* case does not lend itself to such a reading. Here, the Board specifically found that by "massive and systematic violations of Section 8(a)(1) and (3) of the Act" which were "designed to undermine the Union's support," the Company "destroyed the conditions necessary to the holding of a free election on the Union's petition, and made the holding of a fair election in the future unlikely" (A. 615). Accordingly, the Board, applying the *Gissel* holding, concluded that in order to protect the statutory rights and interests of employees and to remedy the unfair labor practices committed, it is essential that the Company be ordered to recognize and bargain with the Union (*ibid.*). The Board bargaining order, we submit, is in all respects valid and the Company's attack on the order is devoid of merit.

CONCLUSION

For the foregoing reasons, as well as those stated in the Board's opening brief, the Company's petition for review should be denied and the Board's orders against the Company should be enforced.

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